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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 342

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND W. B. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT OF THE ATLANTIC COAST LINE RAILROAD COMPANY OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

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STATEMENT OF THE ATLANTIC COAST LINE RAILROAD COMPANY OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

To the Honorable the Chief Justice of the United States and the Associate Justices:

Now comes the Atlantic Coast Line Railroad Company, one of the appellees in the above stated appeal, and, in pursuance of Rule 12(3) of this Court, files this, its statement against the jurisdiction of this Court asserted by the appellants; and, acting under Rule 7 (3) (4) of this Court,

moves the Court to dismiss the appeal in said cause, or affirm the decision of the lower court.

The motion against the jurisdiction of this Court is made on the ground that this controversy has been heretofore passed upon by this Court (282 U. S. 194—*Florida v. United States*) and the law of the case was there settled; and that the subsequent proceedings before the Interstate Commerce Commission were in thorough conformity with the law as thus settled by this Court.

That the Interstate Commission, in the further proceedings had before it, made ample intermediate findings to justify its conclusion that the Florida intrastate rates over the Atlantic Coast Line Railroad for the haulage of certain kinds of logs were unjustly discriminatory against interstate commerce, and that non-discriminatory rates should be prescribed by it for such intrastate transportation.

That these findings were fully supported by the evidence adduced before the Commission.

That the United States District Court, constituted as required by law, properly refused to restrain the Commission's order fixing intrastate rates in Florida for the transportation of such logs.

That the law applicable to the conditions thus presented has been settled by many decisions of this Court and, as well, in this particular controversy; so the controversies are so unsubstantial as not to present a Federal question.

The motion to dismiss the appeal or to affirm the judgment of the court below, is based upon the same grounds and upon the further ground that the questions on which the decisions of the cause depend are so unsubstantial as not to need further argument.

Attention is called to the following notes:

Notes.

(1) The record is not yet prepared or printed and it is impracticable to cite its pages.

(2) This controversy has been passed upon by the Interstate Commerce Commission in reports and orders, reported as follows:

Georgia Public Service Commission v. *Atlantic Coast line Railroad Company,*
I. C. C. Docket No. 18364, 146 I. C. C. 717;
I. C. C. Docket No. 18364, 186 I. C. C. 157;
I. C. C. Docket No. 18364, 190 I. C. C. 588.

(Copies of these reports are filed as appendices hereto.)

It has been passed upon by the United States District Court for the Northern District of Georgia, in opinions reported in

Florida v. *United States,* 30 Fed. (2) 116;
Florida v. *United States,* 31 Fed. (2) 580;
Florida v. *United States* (rendered February 24, 1933, not yet reported).

(Copy of the opinion and decree rendered February 24, 1933, is filed as an appendix hereto.)

It has been passed upon by the Supreme Court of the United States in

Florida v. *United States,* 282 U. S. 194.

Statement of the Case.

The subject matter of this case is a continuation of that involved in the case of *Florida, et al.* v. *United States,* 282 U. S. 194. The latter case came to this Court from

the United States District Court for the Northern District of Georgia, which court had rendered two decisions, reported as follows:

State of Florida v. *United States et al.*;
Wilson Lumber Co. v. *Same*;
Brooks-Scanlon Corporation et al. v. *Same*;
30 Fed. (2) 116, and
State of Florida et al. v. *United States et al.*;
Brooks-Scanlon Corporation et al. v. *Same*;
Wilson Lumber Co. of Florida v. *Same*;
31 Fed. (2) 580.

Those cases made attacks upon the order of the Interstate Commerce Commission entered August 2, 1928, in the case of *Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Company*, 146 I. C. C. 717.

The Interstate Commission in that proceeding fixed interstate rates on logs, except walnut, cherry, and cedar, in carloads from points north of and including Jacksonville, Burnetts Lake and High Springs, Florida, to destinations in Georgia, for distances not exceeding 170 miles. There has been no controversy over those interstate rates. They have been continually in effect since February 8, 1929.

In the same proceeding the Interstate Commission fixed *intra*state rates on the same kinds of logs moving in Florida over the Atlantic Coast Line Railroad Company's lines for distances up to 170 miles. The Commission found that the Florida intrastate rates on those logs, which it displaced, were unduly preferential of shippers and of intrastate commerce, and unjustly discriminatory against interstate commerce (146 I. C. C. 724).

In the above-mentioned case this Court fully sustained the power of the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce (282 U. S. 210).

This Court reversed the lower court, and, in its opinion stated, among other things, as follows:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont, Sour Lake & Western Railway Company* v. *United States, ante*, p. 74), but the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require."

In due course the mandate of this Court was duly entered in the United States District Court for the Northern District of Georgia, and the judgment of this Court was made the judgment of that court.

In the meantime the Atlantic Coast Line Railroad Company had filed its petition with the Interstate Commerce Commission to reopen the proceedings, praying, among other things, that the "Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary"; and that "the Commission prescribe such intrastate rates

in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond 170 miles, as may be lawful." The said motion contained a general prayer that the Commission issue such other and further reports, findings and orders as the Commission might deem proper.

The Georgia Public Service Commission also filed its motion with the Interstate Commerce Commission to like effect.

The said cause before the Interstate Commerce Commission was reopened by the Commission, and extensive new evidence was taken before the Commission's examiners, and briefs were filed by all of the parties to the cause. A tentative report was filed by the examiners. Exceptions were filed to that report and arguments were had before the full Commission. The full Commission, on the 5th day of July, 1932, made its report and entered its order on further hearing (*Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Company*, 186 I. C. C. 157).

The Commission, in its report on the further hearing, found:

> "Finding in the original report, 146 I. C. C. 717, that rates on logs over six feet in length, except walnut, cherry and cedar, in carloads from points in north Florida to destinations in Georgia for distances up to 170 miles were unreasonable, affirmed. Present rates found reasonable" (186 I. C. C. 157).

The rates referred to as "present rates" are those which were fixed by the Commission for interstate application in its report dated August 2, 1928. The same rates were also fixed for intrastate application in said proceeding of August, 1928. The Commission's report of July 5, 1932, also found:

> "Rates on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, applying on shipments

> between points on the Atlantic Coast Line Railroad Company in Florida for distances 170 miles and less, found unjustly discriminatory against interstate commerce" (186 I. C. C. 157).

Rates were prescribed which the Commission deemed to be "on a nondiscriminatory basis." The rates which were thus prescribed by the Commission in this last order were the same as those which had been prescribed by it in its order of August 2, 1928, for both state and interstate application. The rates thus fixed by the Commission in its order of July 5, 1932, were, by amendment, to have gone into effect on September 14, 1932.

Bills were filed in the United States District Court for the Northern District of Georgia, Atlanta Division, by appellants undertaking to enjoin that order, and the rates fixed therein. The bills were filed on the 9th day of September, 1932, and were set for hearing on the 14th of that month, and were heard on that date. The court exercised its statutory authority and granted a suspension of the Commission's order for not exceeding sixty days.

Motions were then made to the Interstate Commission by the appellants herein to reopen the case before the Commission in order that tariffs then recently filed by certain railroads might be considered by the Commission.

By order of October 21, 1932, the Commission did reopen said proceeding

> "for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant."

Further hearing was had in that proceeding, and a substantial amount of additional evidence taken therein, on the 21st and 22nd of November, 1932.

On January 9, 1933, the Interstate Commerce Commission rendered its further report and vacated its said order of suspension of its order of July 5, 1932, as amended, and reaffirmed all of its findings in the prior report on further hearing; that is, the report and order dated July 5, 1932.

Its findings in the supplemental report and in the prior report were stated by the Commission to be

> "without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act."

Thereupon supplemental bills of complaint were filed by the appellants in the United States District Court for the Northern District of Georgia, seeking to enjoin the orders of the Commission.

These causes were heard on February 24, 1933, by the same court constituted as it was in the hearing had in September, 1932, and above referred to. The constituency of the court was Mr. Circuit Judge Sibley, Mr. District Judge Strum and Mr. District Judge Underwood.

After said hearing the court issued its final decree from which this appeal is taken. The court refused to enjoin the orders of the Interstate Commerce Commission.

The Law of the Case Has Been Settled.

Movant contends that the decision of this Court in the case of *Florida* v. *United States,* 282 U. S. 194, settled the law of this case. It also contends that the findings of the

Commission in its reports and supplemental report, referred to, are adequate to sustain its conclusions and are supported by ample evidence.

In the prior case this Court said:

> "If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint" (282 U. S. 209).

Movant believes that the findings of the Commission fully comply with the requirements of that decision and of the cases on which it is based.

Reports of the Commission and the Findings of Fact Therein Contained.

The first report of the Commission (*Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Co.*, 146 I. C. C. 717—August 2, 1928) showed that the volume of log transportation affected by the Florida intrastate rates under discussion (frequently called the "Cummer" scale of rates) was very great. From 1915 to 1926, both inclusive, 128,163 carloads containing approximately 700,000,000 feet of timber were transported under one contract (146 I. C. C. 720); that one of the intervenors owned on August 31, 1926, 1,207,432,000 feet of timber in Florida in the territory affected (146 I. C. C. 720); that during September, 1926, one shipper shipped from Perry and Carbur to Eastport (all in Florida), 166 and 144 miles, respectively, 1,371 loaded cars of logs (146 I. C. C. 722); that the gross earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement (146 I. C. C. 723).

It also found that the interstate rates which movant proposed and the Commission fixed were reasonable; that they are the same as those prescribed by the Alabama Commission for intrastate application within that State, and by the Interstate Commerce Commission for interstate application in other sections of the southeast; and that all of the Florida points from which

> "they will apply appear to be located south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reasonable rates that are higher than from and to other points in southern territory" (146 I. C. C. 723).

The Commission also found in that report:

> "It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory * * *
>
> "They are approximately one-half of the rates prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line" (146 I. C. C. 724).

The Commission also found:

> "The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce" (146 I. C. C. 724).

The Commission found that said undue preference, advantage, undue prejudice, and unjust discrimination could and should be removed by the establishment of rates for intrastate application within Florida which corresponded with the rates therein found reasonable for interstate application from Florida to Georgia.

The rates then established by the Commission for intrastate transportation in Florida are the same as those reestablished in the Commission's later reports and orders herein referred to.

Second Report of the Commission.

The second report of the Commission is dated July 5, 1932 (186 I. C. C. 157), and was rendered by the full Commission acting through Mr. Commissioner Meyer. Some of the important findings in this report are:

> "The interstate rates have since (from February 8, 1929) remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties" (186 I. C. C. 160).

In appendix B to the report (186 I. C. C. 193) varying scales applying on logs on the most important railroads in the southern territory are set out as a means of comparison. The Cummer scale begins at 1.71 cents (per 100 pounds) for 5 miles and goes to 3.70 cents for 170 miles. The Class P rates then take effect and for 171 miles the rate is 8.33 cents, or more than twice as high as the Cummer scale of rates (186 I. C. C. 161).

The scale of rates fixed in the original report (the same as the one reaffirmed in the second report—July 5, 1932) is shown in column 5 of Appendix B. It had its origin in *Pierpont Mfg. Co.* v. *Southern Ry. Co.*, 50 I. C. C. 81 and was reviewed in three subsequent cases, and, as subjected

to the general rate changes, was either prescribed or approved for application on logs between various points in the south. The Alabama Commission adopted the same scale and it was on the date of the report in effect on the Atlantic Coast Line's lines in Alabama. The Georgia Commission likewise adopted it for application in Georgia but suspended its application because of the existence of the Cummer scale in Florida (186 I. C. C. 162).

The rates applied intrastate in Florida over the Seaboard Air Line and the Georgia Southern and Florida railroads respectively, "are approximately twice as high as the Cummer scale" (186 I. C. C. 162).

The scale of rates adopted by the Interstate Commission or one that compares favorably with it applies interstate over the lines of the most important carriers in the South (186 I. C. C. 163).

> "Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on defendant's system outside of Florida. The cost of the service in Florida is higher than on the remainder of the system. * * * Density of traffic in Florida is much lighter than on defendant's lines elsewhere" (186 I. C. C. 163-164).

The Commission found over a period of years the ton miles of the Atlantic Coast Line's system and the ton miles in Florida and the ton miles of the system excluding Florida, and invariably the ton miles in Florida were very much less than for the system and this is accentuated when compared with the ton miles of the system excluding Florida (186 I. C. C. 164).

> "The less favorable operating conditions in Florida south of that line have given rise to the general prac-

> tice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory" (186 I. C. C. 164).

The percentage of the log traffic of the Atlantic Coast Line for May, 1926, of all tonnage was 7.26 and the percentage of the freight revenue on logs as compared with all traffic revenue for the same period, was only 2.5 (186 I. C. C. 165).

The Commission reaffirmed the finding made in its original report that the Cummer scale of rates is abnormally low and that the rates under that scale "are less than reasonably compensatory" (186 I. C. C. 165).

The Commission found that the intrastate rates on the logs in question, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less

> "are and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less,"

of rates prescribed, which are the rates found reasonable for interstate application from northern Florida to Georgia (186 I. C. C. 189).

The Commission made appropriate findings showing that it is necessary to increase the Florida intrastate rates to avoid an undue burden on interstate rates from a revenue standpoint. Its findings in this respect begin at page 166 of its second report (186 I. C. C., July 5, 1932).

The value of the investment of the Atlantic Coast Line Railroad Company was found for the years 1926, 1929 and 1930 and the return upon investment was shown to have decreased from 6.11 per cent in 1926 to 4.20 per cent in 1929 and 2.37 per cent in 1930. During the five year period, 1926-1930, system log traffic averaged 7 per cent of the total

system traffic. Nearly fifty per cent of the system log traffic was in Florida. In 1928, the Atlantic Coast Line transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida. While the log traffic to the system in 1928 was 7 per cent of the total traffic, the log revenue was 1.9 per cent of the total revenue; in 1929 the log traffic was 5.0 per cent of the total traffic, while the log revenue was 1.5 per cent of the total revenue; and in 1930 the log traffic was 4.0 per cent of the total traffic while the log revenue was 1.3 per cent of the total revenue. The percentages of the log traffic in Florida to the total traffic in that State were 9.4 in 1928; 4.3 in 1929 and 3.6 in 1930. The Commission states:

> "The above figures reflect the small revenue burden borne by the log traffic" (186 I. C. C. 166).

The rates fixed by the Interstate Commission in its report of August 2, 1928, were in actual operation intrastate in Florida from February 8, 1929, into 1931, and a statement showing all shipments of the kinds of logs in question which moved over the lines of the Atlantic Coast Line intrastate in Florida during the period from February 8, 1929, to January 31, 1931, was submitted. That traffic, of course, moved under the scale of rates fixed by the Interstate Commission.

> "This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected" (186 I. C. C. 167).

If the Cummer scale had been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system, the Atlantic Coast Line's reduc-

tion in revenues would have been approximately $675,381.21 based on the facts that the movement of logs on its system, including the long but not the short length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement was 456,134,800 pounds, and the intrastate movement 2,994,630,500 pounds. The revenues from all of those logs amounted to $1,483,424.87 of which the revenue on interstate movements amounted to $26,654.12, and on intrastate to $1,216,770.75 (186 I. C. C. 168).

The Commission in its report of July 5, 1932 (186 I. C. C. 183), found:

> "There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things."

This was repeated in the Commission's report dated January 9, 1933 (note 190 I. C. C. 599).

The quantity of timber in Florida is shown by the Commission's report (186 I. C. C.) beginning at page 173. In July, 1931, the standing pine timber in Florida was 21,913 billion feet (186 I. C. C. 173). That did not include hardwood. The annual production of cypress in Florida is around 200,000,000 feet (186 I. C. C. 173). The Commission states:

> "The defendant's freight-traffic manager testified: 'Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the south Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40 per cent of the

logs to be produced in Florida from timber now standing, it will handle approximately 9 billion feet, or approximately 128,570 cars of logs. If the average length of haul should be 81 miles, as was the case in 1929-1930, which average haul may be expected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be 4,949,945. The difference in the gross revenue under the two scales of rates would be $2,779,968' " (186 I. C. C. 174).

Substantial accounting evidence was given and is discussed by the Commission, beginning at page 176 of 186 I. C. C. The Atlantic Coast Line claimed that the Cummer scale of rates did not pay the cost of handling the traffic. This cost accounting sustained the position of the Atlantic Coast Line that the revenue from this traffic did not pay its costs; notwithstanding the fact that the Commission determined that the operating expenses attributed to Florida had been "understated to an unknown extent" (186 I. C. C. 184).

The Commission then made its own calculations, using system figures, saying:

> *"Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida"* (186 I. C. C. 184). (Italics added.)

Under the Commission's own calculations, for the average haul of 81.36 miles the total cost per car was $24.69,

against a gross revenue per car of $15.12, or a loss of $9.57 per car. After making this finding the Commission states:

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida is that these average costs per unit do not include anything for joint-facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting nonrevenue or company freight" (186 I. C. C. 187).

At page 187 of 186 I. C. C., the Commission makes something of a summation of its findings, stating:

> "The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its '*fair proportionate share*' of operation and maintenance alone." (Italics added.)

The Commission found that during the period when the interstate scale of rates was in effect (February 8, 1929—April 10, 1931), there was a depressed condition of the lumber industry, and that it materially affected the log traffic since the latter part of 1930. It found that during the period from February 8, 1929, to January 31, 1931, which was within the time when the increased rates were in effect, the total movement over the Atlantic Coast Line's lines amounted to 18,602 cars. It estimated that in a nor-

mal period the log movement would not be less than the average for that two year period minus the number of cars included in the discontinued trainload movements. Those discontinued trainload movements amounted to 3,740 cars, so the average was 7,431 cars. The Commission then finds:

> "The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06), and if the Cummer scale had been applicable they would have been $232,939 ($281,225.75 minus $48,286.75), or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue" (186 I. C. C. 188-189).

Third Report of the Commission.

The third report of the Commission was rendered January 9, 1933 (190 I. C. C. 588). The proceeding was reopened before the Commission in order that it might consider tariffs which had then been recently filed by a number of railroads, especially in the southwestern portion of

the southeastern part of the country. Those tariffs were first established by certain railroad operating west of the Mississippi following a meeting held March 29, 1932. They usually apply for distances of from twenty up to one hundred miles, and were put in experimentally (190 I. C. C. 589).

Those rates are based on a per car movement without regard to the capacity of the car or the amount of the load. They are not established between all points of any of the systems, with a few exceptions. For instance, the Illinois Central System applies those rates to approximately thirty manufacturing points east of the Mississippi River, two of which are in Tennessee, two in southern Louisiana, and the remainder in Mississippi (190 I. C. C. 590).

> "The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist." (190 I. C. C. 591).

The Commission's report is a very keen analysis of the testimony and shows that the experimental rates are for the most part unsatisfactory to the roads which have put them into effect; that they have not recaptured any material part of the transportation of logs done by trucks for distances above fifty miles; that there are eleven mills located on the lines of the Atlantic Coast Line cutting a total of approximately 87,500 feet a day, and the maximum haul by truck was 10 miles to two of the mills, between ten and fifteen miles to two, between fifteen and twenty miles to two, between twenty and twenty-five miles to three, and between twenty-five and thirty miles to one (190 I. C. C. 594).

The Commission also found:

> "The record warrants the conclusion that truck competition and, to a lesser degree, carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intr-state log traffic over defendant's lines in Florida" (190 I. C. C. 598).

The Commission again states that transportation conditions are not substantially similar throughout southern territory, and that the circumstances and conditions surrounding the transportation of logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over the Atlantic Coast Line's lines; and that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to

the rates on interstate traffic to and from points in that territory (190 I. C. S. 599). The Commission then found:

> "Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills, but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances" (190 I. C. C. 599).

The experimental rates which were put into effect are, in nearly all instances, transit rates; that is, the shipper does not get the benefit of the reduced rates unless he ships the products manufactured from the logs over the lines of the carrier which takes the logs to the manufacturing point.

The Commission further condemned those per car rates, saying:

> "Generally we do not approve of rates published in amounts per car regardless of weight and nothing herein contained should be considered as an approval of rates so published on logs" (190 I. C. C. 600).

The Commission affirmed all its findings in its report on further hearing (that is, its report of July 5, 1932), and vacated its order suspending the operation of its order of July 5, 1932, as amended (190 I. C. C. 600).

The Facts Have Been Settled.

It is respectfully and earnestly submitted that the Interstate Commission intended to give, and did give, full force

and effect to the decision of this Court rendered in the case of *Florida* v. *United States*, 282 U. S. 194; and the findings of the Commission have fully complied with each requirement of the decision of this Court in that case. The basic facts essential to support the Commission's orders have been made, and are supported by ample evidence.

Decision of the United States District Court of February 24, 1933.

The court below filed its findings of fact and conclusions of law on February 24, 1933. It had been contended by some of the complainants that the decision of this Court in *Crowell* v. *Benson*, 285 U. S. 22, required the court below to have an entirely *de novo* trial on a record made before that court. One other of the complainants contended that it was entitled to a trial *de novo*, but on the record made before the Interstate Commerce Commission.

These contentions were based on the theory that, as the existence of unjust discrimination against interstate commerce is essential to the exercise of jurisdiction by the Interstate Commission over intrastate rates, the Commission's findings of such discrimination should be reviewed *de novo;* and that the decision in the Crowell case so requires.

The court disagreed with both contentions; but none the less gave *de novo* consideration to the record, and did not confine its findings of fact to the proposition that the Interstate Commerce Commission's reports and orders were sustained by the evidence, but went further and found that the Commission's conclusions of fact, besides being "well supported by the evidence," were "such as we would ourselves make therefrom." In its conclusions of law, the court came to the same result, saying:

"We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a pre-requisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists."

The full opinion of the court below is set out as an appendix hereto, but for convenience, we quote from the findings of fact in that opinion, as follows:

"We find the conclusions of fact in the Commission's report to be well supported by the evidence, and such as we would ourselves make therefrom. Referring to that report for details we summarize the ultimate facts most material to the present issues. The State rates known as the Cummer scale were voluntarily established in substance in 1903 and 1904 by Jacksonville & Southwestern R. R. Co., when railroad and timber to be transported were owned by the same interests. The rates were inherited by the Atlantic Coast Line R. R. Co., on purchasing the railroad involved, and were by it applied as carload rates over all its lines in Florida in 1914. The Florida Railroad Commission at the time asserted that it did not approve the rates though perforce it allowed them, considering them too low and even confiscatory if involuntarily enforced. They apply on no other railroad in Florida. In 1928 and in 1932 comparisons of these rates with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic in the same logs in substantially the same territory. On the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Coast Line system, exact figures for the par-

ticular traffic in Florida not being available. But it appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars, and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer scale had been applied it would have been $281,225.75. Although the traffic fell off greatly during this period it is found to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the division of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier as an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%. On these findings the general finding was made that the Cummer rates are and in future will be unjustly discriminatory against interstate commerce, and that such unjust dis-

crimination can and should be removed by rates not less than the scale prescribed for interstate commerce. Pending this litigation, in October, 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of the southern territory and in southwestern territory. If found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5, 1932."

BRIEF OF THE LAW.

1. There can be no question but that the Congress has the power to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove unjust discrimination against interstate commerce.

This has been specifically settled in this particular controversy in *Florida* v. *United States*, 282 U. S. 194, at 210, and authorities cited.

2. Congress has exercised its power and has authorized the Interstate Commerce Commission to exercise this authority. *Interstate Commerce Act*, §§3, 13 (3) (4) and 15(*a*). There is a "dovetail" relation between sections 13 and 15(*a*) of the Act to regulate commerce to the end that

"intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

Wisconsin R. R. Comm. v. *C., B. & Q. R. R. Co.*, 257 U. S. 563.

If intrastate commerce does not bear that proportionate share, it thereby places a burden upon interstate commerce.

"If the rates, on which such receipts, (intrastate shipments) are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be."

Wisconsin R. R. Comm. v. *C., B. & Q. R. R. Co.*, *supra.*

(3) "Whether a rate is unjustly discriminatory is a question on which the finding of the Commission, supported by substantial evidence, is conclusive, unless there was some irregularity in the proceeding or some error in the application of rules of law."

Virginia Railway Company v. *United States*, 272 U. S. 658;

Western Paper Makers' Chemical Co. v. *United States*, 271 U. S. 268;

Tagg Brothers & Moorehead v. *United States*, 280 U. S. 420;

Houston & Texas Railway Co. v. *United States*, (Shreveport case) 234 U. S. 342;

Skinner & Eddy Corporation v. *United States*, 249 U. S. 557-562;

Georgia Public Service Commission v. *United States*, 283 U. S. 765;

Manufacturers Railway Co. v. *United States*, 246 U. S. 457-481;

Louisiana Public Service Commission v. *New Orleans & Texas Railroad*, 284 U. S. 125.

The decision of this Court in *Florida* v. *United States*, *supra*, involving the same controversy as is involved in appeal, makes no different ruling.

From *Manufacturers Railway Company* v. *United States*, *supra*, we quote as follows:

> "Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission, (*Interstate Commerce Commission* v. *Alabama Midland Ry. Co.* 168 U. S. 144, 170), and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. This results from the provisions of §§ 13 and 16 of the Commerce Act as amended in 1906 and 1910, expounded in familiar decisions."

Discussion of Case of Crowell v. Benson.

In the court below it was argued by the appellants that the case of *Crowell* v. *Benson*, 285 U. S. 22, decided by this Court on February 23, 1932, changed the effect of the decisions above noted, and others of like kind; and that inasmuch as the existence of unjust discrimination against interstate commerce by an intrastate rate was essential to the arising of the Interstate Commission's power to fix intrastate rates, the question of the existence of such unjust discrimination was subject to a *de novo* review by the Court. Some of the appellants contended, as we have pointed out, that the *de novo* review of the court should be on an independent record, while one appellant contended that it should be on the record made before the Commission.

We respectfully submit that neither contention is correct and the lower court was correct in so ordering.

This Court, in the *Crowell* v. *Benson case*, drew a distinction between "cases of private right" and "those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments." The Court treats those two divisions of the subject as "categories," and at page 51 the Court says:

> "'Familiar illustrations of administrative agencies created for the determination of such matters are found in connection with the exercise of the Congressional power as to interstate and foreign commerce, taxation, immigration, the public lands, public health, the facilities of the post office, pensions, and payments to veterans.'"

In Note 13, on page 51, the Court cites a number of cases including some of those hereinbefore cited.

The Court declared:

> "The present case (the Benson case) does not fall within the categories just described but is one of private right, that is, of the liability of one individual to another under the law as defined" (285 U. S. at 51).

Of course, the making of rates for future application is a legislative process. It has been so held by this Court many times. Note—

L. & N. R. R. Co. v. *Garrett*, 231 U. S. 298, at 305;
Manufacturers Railway Co. v. *U. S.*, 246 U. S. 457,

heretofore referred to.

In the case of *Interstate Commerce Commission* v. *Louisville & Nashville Rd. Co.*, 227 U. S. 88, at page 92, the Court held:

> "Under the statute (to regulate commerce) the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the sub-

> stitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. *Int. Com. Comm.* v. *Northern Pacific Ry.*, 216 U. S. 538, 544. In a case like the present the courts will not review the Commission's conclusions of fact, (*Int. Com. Comm.* v. *Delaware, etc. Ry.*, 220 U. S. 235, 251), by passing upon the credibility of witnesses, or conflicts in the testimony. But the legal effect of evidence is a question of law."

In the case at bar the finding of unjust discrimination against interstate commerce is no more of a jurisdictional pre-requisite to the action of the Interstate Commerce Commission than was the finding of unreasonableness in the Louisville & Nashville case. The finding in that case was essential to the arising of the power in the Commission to take from the railroad company "its primary right to make rates." The finding of undue discrimination against interstate commerce in the present case was likewise essential to the arising of the power in the Commission to tear down the Florida intrastate rates (the Cummer scale). Like finding was necessary in the *Shreveport case*, 234 U. S. 342, at pages 357 and 358.

This is also true in the rulings of this Court in the cases heretofore cited of

Virginian Railway Co. v. *United States*, 272 U. S. 658;

Western Papermakers' Chemical Co. v. *U. S.*, 271 U. S. 268;

Skinner & Eddy Corp. v. *United States*, 249 U. S. 557-562;

Georgia Public Service Commission v. *U. S.*, 283 U. S. 765;

Manufacturers Railway Co. v. *United States*, 246 U. S. 457-481.

In all of these cases the Commission's findings, supported by substantial evidence, were held to be conclusive though the question of discrimination or unreasonableness was the basis of the Commission's jurisdiction.

We have pointed out that the court below did not rely, either in its findings of fact or conclusions of law, upon the finding that the Commission's conclusions were supported by evidence, but it has, in this case, found that the findings of both fact and law are the same as they themselves would have found.

It would seem, therefore, that the claim that the case of *Crowell* v. *Benson* has worked any change in the jurisprudence of this subject is wholly without merit.

The Effect Given by the Commission and the Court Below to the Rates Experimentally Established in Certain Parts of the Southeastern Territory for the Transportation of Logs.

We have shown that the Interstate Commission found, in its report of January 9, 1933, on the reopened hearing, that these rates are, for the most part, transit rates; that is, the shipper is not entitled to the reduced rate until he ships over the same railroad which brought the logs to the manufacturing point, the products which are manufactured from those logs; that the rates are experimental and were put into effect to meet truck competition, and rail and truck competition. Those rates apply to limited distances and are based upon carloads, regardless of the capacity of the car or the amount loaded. To illustrate: a car with 60,000 pounds capacity brings no more revenue than a car of 120,000 pounds capacity, both being fully loaded.

The Interstate Commission, as we have shown, in its report of January 9, 1933, expressed its displeasure at this form of rates, stating:

> "Generally we do not approve of rates published in amounts per car regardless of weight and nothing herein contained should be considered as an approval of rates so published on logs." (190 I. C. C. 600).

This method of fixing rates has been criticized in the cases of *S. A. L. Ry. Co.* v. *Lumberman's Co.*, 168 Ga. 851; *L. & N. Rd. Co.* v. *Speed-Parker, Inc.*, 137 South. 724 (from the Supreme Court of Florida), and *Leonard* v. *Railroad*, 2 I. C. C. 602. This form of rates makes room for discrimination and favoritism, and gives the carrier no control whatsoever over its tonnage rates.

Comparison of rates is a method often used in proceedings to establish the reasonableness or unreasonableness of a rate which is under attack. This method was used in this cause. The Commission had the right

> "to compare the rates assailed with other rates which *in its judgment* formed a proper basis of comparison." *Northern Pac. Ry. Co.* v. *United States*, 60 Fed. (2d) 302, at 308. (Italics added.)

The court meant by that decision to hold that the very fact of determining what rates are proper for such use is the prerogative of the Commission and involves the exercise of the Commission's judgment and experience.

This Court has recognized that

> "competition by rail as well as by water may compel such a reduction in rates as altogether to destroy their value for purposes of comparison." *Louisville & Nashville Railroad* v. *United States*, 238 U. S. 1, 13.

Of course, if water competition or rail competition can have that result, competition by trucks can also have it. That is, a rate forced upon a carrier by competition can be so low as to make the rate thus fixed an improper standard of comparison for the movement of the same or like commodities for similar distances over the same lines.

The Commission found truck competition, and to a lesser degree carrier competition, had caused the responsible traffic officials of the various railroads operating in the western portion of southern territory to establish experimentally the new rates referred to. It also found that neither the transportation nor competitive conditions in Florida were similar to those elsewhere (190 I. C. C. 598 and 599).

The findings of the Commission as to the value of those newly established rates for purposes of comparison should, we respectfully submit, fall under the same rules which apply to other findings of fact by the Commission, when those findings are sufficiently supported by evidence; namely, they should be treated by the Court as conclusive.

WHEREFORE Atlantic Coast Line Railroad Company respectfully prays that this Court determine that the questions raised in this appeal, having been so fully settled in the previous adjudications in this cause, and by the rules well established in such matters, the Federal question is not substantial. It also prays that this, its motion to dismiss the appeal or affirm the judgment of the lower court, be granted.

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W. E. KAY,
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Counsel for Atlantic Coast Line Railroad Company.

ALSTON, ALSTON, FOSTER & MOISE,
Of Counsel.

May 2, 1933.

(Copy.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

In Equity.

Nos. 690, 691 and 695.

STATE OF FLORIDA ET AL., *Complainants*,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, Intervenor, *Respondents*.

Consolidated Petitions for Injunction.

This consolidated cause came on for hearing for a final decree on Feb. 24, 1933, and was submitted upon the pleadings and evidence introduced then and theretofore to a special court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable E. Marvin Underwood, District Judge, and Honorable Louie W. Strum, District Judge.

Pursuant to the findings of fact and conclusions of law filed herewith, it is now considered, ordered and decreed that the orders of the Interstate Commerce Commission, made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made Jan. 9, 1933, as set forth in the pleading, be and are hereby sustained, and the prayer to annul and set aside and enjoin the same is refused, and that the respondents recover of the complainants their costs in this behalf to be taxed by the Clerk.

This February 24, 1933.

SAM'L H. SIBLEY,
Circuit Judge.
E. MARVIN UNDERWOOD,
District Judge.
LOUIE W. STRUM,
District Judge.

(Copy.)

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vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, Intervenor, *Respondents*.

Consolidated Petitions for Injunction.

Three bills were filed against the United States and Interstate Commerce Commission, one by the State of Florida and the Florida Railroad Commission, another by Wilson Cypress Company and Wilson Lumber Company, and the third by F. S. Buffum & Co., Inc. Each upon similar allegations seeks to set aside and enjoin an order of the Interstate Commerce Commission made July 5, 1932, and amended July 28, 1932, whereby rates were prescribed for intrastate carload shipments in Florida of logs of certain classes conforming to rates established as reasonable for like shipments in interstate commerce between Florida and Georgia. The Atlantic Coast Line R. R. Co., the carrier whose rates were involved, intervened. After the grant of an order suspending the operation of the rates the bills were by consent consolidated and heard before a court of three judges on the pleadings and on the evidence submitted.

Findings of Fact.

The attacked order of the Commission is its final judgment on a proceeding instituted in 1926 by the Georgia Public Service Commission to which the complainant and intervenor in the present bills became parties. The then existing interstate rates on logs between Florida and Georgia were complained of, and the Florida intrastate rates referred to as the Cummer scale were attacked as

causing undue prejudice to persons and places in Georgia in their commerce with Florida, and unjust discrimination against interstate commerce under § 13 of the Interstate Commerce Act. After lengthy hearings, on Aug. 2, 1928, reasonable interstate rates were fixed, and upon a general finding that the intrastate rates in question caused discrimination against interstate commerce an intrastate rate was prescribed to conform to the new interstate rates. 146 I. C. C. 717. On attack in this court against that part of the order fixing the intrastate rate it was upheld as justified for the removal of discrimination against persons and places in Georgia by confining its application to north Florida. 30 Fed. (2d) 116. The order was, however, clarified by the Commission so as to require its application to the entire State, and upon further attack it was upheld as proper to remove a discrimination against the general interstate commerce of the carrier in that the State rates were so low as to be unremunerative and to burden the revenues of the carrier. 31 Fed. (2d) 580. On appeal the Supreme Court declined to consider the evidence but reversed the judgment because there were not distinct findings by the Commission of the facts going to show such discrimination by a burden on revenues, the Court holding that the general finding that there existed a discrimination against interstate commerce in the language of § 13 (4) of the Act was insufficient to authorize the Commission to exercise its powers under that section; but it was suggested that such findings might yet be made upon proper evidence. 282 U. S. 194. This Court accordingly entered its decree setting aside and annulling the portion of the order complained of. Thereupon the Georgia Public Service Commission and the Atlantic Coast Line R. R. Company on due notice to all parties, including the present complainants, moved the Interstate Commerce Commission to reopen the case before it, which over objection was done, and much new evidence was added to that previously taken. A motion was made by the present complainants at the beginning of the hearing to dismiss the proceedings as respects any issue of burden on the revenues of the carrier, and to exclude all evidence directed to that contention. The motions were overruled by the examiner, and again by the full

Commission, which after argument made an elaborate and lengthy report of its findings, put aside the question of undue prejudice by the State rates to persons and places in Georgia as unnecessary to be decided, but held the rates to be burdensome on the interstate carrier's revenues and thus a discrimination against interstate commerce, which it removed by again prescribing under § 13 (4) of the Act future State rates to conform to the interstate rates which it had established as reasonable. 186 I. C. C. 157.

We find the conclusions of fact in the Commission's report to be well supported by the evidence, and such as we would ourselves make therefrom. Referring to that report for details we summarize the ultimate facts most material to the present issues. The State rates known as the Cummer scale were voluntarily established in substance in 1903 and 1904 by Jacksonville & Southwestern R. R. Co., when railroad and timber to be transported were owned by the same interests. The rates were inherited by the Atlantic Coast Line R. R. Co., on purchasing the railroad involved, and were by it applied as carload rates over all its lines in Florida in 1914. The Florida Railroad Commission at the time asserted that it did not approve the rates though perforce it allowed them, considering them too low and even confiscatory if involuntarily enforced. They apply on no other railroad in Florida. In 1928 and in 1932 comparisons of these rates with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic in the same logs in substantially the same territory. On the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Coast Line system, exact figures for the particular traffic in Florida not being available. But it appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the

maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer Scale had been applied it would have been $281,225.75. Although the traffic fell off greatly during this period it is found to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the decision of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier was an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer Scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%. On these findings the general finding was made that the Cummer rates are and in future will be unjustly discriminatory against interstate commerce, and that such unjust discrimination can and should be removed by rates not less than the scale prescribed for interstate commerce. Pending this litigation in October, 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of the southern territory and in southwestern territory. It found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and gen-

erally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5, 1932.

Conclusions of Law.

We are of opinion that the particular findings are sufficient to support the general finding of unjust discrimination by the State rates against interstate commerce by undue burden on the interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed.

The contention is vigorously renewed that the proceeding before the Commission never was one in which a burden by the State rates on the revenues of the carrier was made an issue, so that the Commission could properly so find and on that ground prescribe a State rate under § 13 (4) of the Act. We adhere to the views expressed in our former decisions, 30 Fed. (2), 116; 31 Fed. (2d) 580. It is true that the Georgia Public Service Commission in its original complaint did not ask that the Florida State rates be raised, and it rather preferred that interstate rates should be lowered, but the complainant directly challenged the State rates, alleged that they caused a discrimination against interstate commerce within § 13 of the Act, and prayed for its removal. The State of Florida was duly notified as required by that section, and on full hearing discrimination was found to exist and sought to be removed by prescribing a new State rate by virtue of § 13 (4). This Court held that discrimination by revenue burden was within the case before the Commission, and upheld the order on that ground only. The Supreme Court, 282 U. S. at p. 209, so far from disagreeing said: "As the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company the rates of which were in question and other parties in interest, both shippers and carriers, were heard, the

question now presented relates to the substance of the determination of the Commission and its support in the evidence, rather than to mere matters of pleading and procedure. In making its order the Commission could exercise all the authority conferred by the Interstate Commerce Act for the purpose of removing such unjust discrimination as it found to exist. If the Commission had made adequate findings, supported by evidence, upon the point under consideration we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or because of the generality of the allegations of the complaint." Much more forcibly do these words apply, now that the parties have had another full hearing upon this precise issue, with full knowledge that courts and commission regarded that issue not only as present but as controlling. The Commission having in due form found that the State rates do cause an unjust discrimination against interstate commerce by the very words of § 13 (4): "It shall prescribe the rate * * * thereafter to be charged * * * in such manner as in its judgment will remove such discrimination." It is the judgment of the Commission and not the wish or the prayers of the Georgia State Commission that is to determine what shall be done about the discriminatory State rate.

Early in the reopened proceedings before the Commission the complainants made a written demand on Atlantic Coast Line R. R. Company that it produce a statement supported by individual car record movements, showing certain details as to cars of logs moving on its lines between points in [illegible] and Georgia for each of the years 1926, 1927, 19[illegible] moving [illegible] and a [illegible] terstate [illegible] those y[illegible] it exp[illegible] log tra[illegible] lack of [illegible] tinctio[illegible] did pr[illegible] fore.

ance. It will be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know. We are aware of no rule of law or practice which would require a litigent laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it would lie in the discretion of the tribunal to decline to compel it. We find in such refusal no cause to upset an order founded on evidence which was duly produced before that tribunal.

But it is said that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correction.

The ascertainment of the general fact of loss is said to be unlawful because the witnesses and the Commission dealt in part with the average costs of similar service over the [illegible] which the Western and the general costs of business [illegible] in the division which substantially embraces the State of Nevada rather than the actual cost of handling traffic in that [illegible]. It is true that the latter information could not be gotten, that the cost of service in Nevada for the year given was greater than elsewhere in the Western district and that the average costs for the Western district showed a loss less than the Nevada costs. If this could have been separately ascertained, the difference in cost between hauling [illegible] and other carload freight was also given attention. The [illegible] the best evidence obtainable has to be used as a basis for inferences, and conclusions of fact made there-

from with due allowance for possible inaccuracies are not invalidated because the best evidence logically possible was not at hand.

Appendix E of the Report entitled "Estimated Costs of Transporting Logs in Florida for the Average Distance of 81.36 Miles Based on A. C. L. Average Costs Per Unit for Calendar Year 1929 Applied to the Average Units Involved in Hauling Logs in that State", is attacked as being evidence considered by the Commission which was not introduced in the proceeding so that opportunity should be given to the parties to meet it, contrary to *Interstate Commerce Commission* v. *Louisville & Nashville R. R.*, 227 U. S. 88. We do not understand the appendix to be evidence considered by the Commission. It is rather the Commission's conclusion as to the cost of hauling logs in Florida for the distance shown to be the average under the Commerce scale, based on the evidence which had been produced to it as tending to show such cost. So far from vitiating the order made it rather tends to show the care and discrimination with which the inexact evidence of cost was examined and considered.

A contention strongly urged is that the direct prescription by the Interstate Commerce Commission of an intrastate rate is prima facie an unconstitutional invasion of the province of the state, so that the burden is on the defendants here to justify it before the court, and that in order to justify it the facts of justification, to wit, those showing the state rate to be an unjust discrimination against interstate commerce, must clearly appear to this Court, the findings of the Commission not being conclusive, but in themselves weighing on the very point of the Commission's jurisdiction. It is not doubted that the power of the Commission to make an order is a judicial question, and that the court may examine it independently. But, however, the fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is entitled to just the same weight when this case is [illegible] at one time all findings of the Commission were declared

by the statute to be only *prima facie* evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact *within the scope of its powers* will not be reviewed by the courts if supported by evidence. *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501. Where the matter examined relates to its power to act at all the decisions are perhaps not so explicit, but we may refer to the following expressions of the court as bearing directly upon it: In *I. C. C.* v. *Northern Pacific R. R. Co.*, 216 U. S. 538, 544, it was said: "We are of opinion that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases, great weight should be attached to the judgment of the Commission." In *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547, in discussing fundamental questions of the constitutional and statutory power of the Commission it was said: "In determining these mixed questions of law and fact the court confines itself to the ultimate question whether the Commission acted within its power * * * Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." In *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S. 88, the court held that the power of the Commission to alter rates depended upon the fact of their unreasonableness, but that the Commission having found no evidence that they were excessive, its order was not to be disturbed. In *United States* v. *L. & N. R. R. Co.*, 235 U. S. 314, 320, the language held is: "It is not disputable that from the beginning the very purpose for which the

Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether, from facts disputed or undisputed, in a given case preference or discrimination existed, and the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases *supra*, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action." We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists.

In the evidence of lower voluntary rates recently made by other carriers in other territory we find nothing to require a different conclusion. A situation may thereby arise requiring inquiry as to other discriminations, but it throws little light on the revenue problem of the Atlantic Coast Line Railroad Company as an interstate carrier. If log traffic done in Florida on the Cummer scale is at an out-of-pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted. The Commission has given full and expert attention to the situation, and has found that adherence to the level of log rates it has previously established as reasonable in interstate commerce and has applied as a minimum in intrastate commerce in Florida should be continued. We find no such plain case to the contrary as to warrant court interference. The findings and the evidence show the Cummer scale of rates to constitute

such a substantial revenue burden on the Interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Interstate Commerce Act, § 13 (4). The action to be taken in removing it is left by the section to the judgment of the Commission. It having power in this case to prescribe a proper intrastate rate, its judgment as to the level of the rate to be established in order to accomplish the desired revenue result ought not to be overridden when sustained by evidence and violative of no law. We uphold the orders of the Commission.

SAM'L. H. SIBLEY,
Circuit Judge.

E. MARVIS UNDERWOOD,
District Judge.

LOUIE W. STRUM,
District Judge.

Filed by the Court at New Orleans, La., Feb. 24, 1933.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

No. 342.

STATE OF FLORIDA *et al.*, *Appellants*,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, *Intervenor*, *Appellees*.

Reports and Orders of the Interstate Commerce Commission.

146 I. C. C. 717.
186 I. C. C. 157.
190 I. C. C. 588.

Appendices to Motion of Atlantic Coast Line Railroad Company.

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANTIC COAST LINE RAILROAD COMPANY

Submitted December 16, 1927. Decided August 2, 1928

1. Interstate rates on logs, except walnut, cherry, and cedar, in carloads, from Florida points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, Fla., to destinations in Georgia found unreasonable. Reasonable rates prescribed.
2. Florida intrastate rates on logs, except cedar, in carloads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce, and unjustly discriminatory against interstate commerce. Rates prescribed which will remove such preference, prejudice, and discrimination.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff, and *E. M. Price* for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; *J. C. Jackson* and *H. A. Jackson* for Jackson Brothers Lumber Company; *J. E. Davies* for himself; and *C. C. Giddens* for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and *W. E. Kay* for defendant.

Frank W. Gwathmey and *Henry Thurtell* for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and *J. A. Strieyer* for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Teuch, and *Fred Pettijohn* for Florida Railroad Commission.

T. J. McGinn for Board of Trade and city of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wilson Cypress Company, and Putnam Lumber Company; *Edward P. Saulsbury* and *George L. Rutherford* for Brooks-Scanlon Corporation; *H. P. Adair* for Putnam Lumber Company, *H. P. Osborne* for Wilson Cypress Company; *E. W. Mitchell* for Cummer Cypress Company; *J. S. Farish* for Southeastern Forest Products Association; *J. O. Cassidy* and *E. C. Green* for Jacksonville Traffic Bureau; *R. E. Mich* for Southern Cypress Manufacturers' Association; and *A. G. T. Moore* for Southern Pine Association, interveners.

BY THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

Exceptions were filed by complainant and by interveners Seaboard Air Line, Central of Georgia, Southern, and Georgia Southern & Florida to the report proposed by the examiner, to which the Florida Railroad Commission and interveners Jacksonville Traffic Bureau, Southeastern Forest Products Association, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company replied. The case has been orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed May 3, 1926, complainant alleges on behalf of Georgia log shippers that the rates on logs in carloads from points in Florida on defendant's lines to destinations in Georgia on defendant's lines are unjust and unreasonable and, as compared with the rates applicable intrastate within Florida, unjustly discriminatory and unduly prejudicial, and that defendant's Florida intrastate rates are unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce. Reasonable, nonprejudicial, and nondiscriminatory rates for the future are sought.

The Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates. The Elberta Crate Company of Bainbridge, Ga., intervened in support of the complaint. The Seaboard Air Line, Central of Georgia, Southern, Georgia Southern & Florida, and the American Short Line Railroad Association intervened in opposition to the continuance of the present Florida intrastate rates and to the extension of such rates intrastate to Georgia. The Jacksonville Traffic Bureau, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company, hereinafter referred to as the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Sawmill Association, now the Southeastern Forest Products Association, the Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed on the grounds that evidence sufficient to constitute a cause of action within the power of this commission to remedy had not been submitted and that the allegations of the complaint had not been sustained. The evidence justifies consideration of the case on its merits and the motion is denied.

While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles.

The interstate rates from north Florida to Georgia are published in cents per 100 pounds, minimum 40,000 pounds, and apply between north Florida and points south of Charleston, S. C. They became effective August 15, 1925, as a part of a general revision of defendant's log rates. From points south of Jacksonville, Gainesville, Burnett's Lake, and High Springs higher interstate rates apply. The Florida intrastate rates assailed are published in amounts per car, minimum 50,000 pounds, excess in proportion, and apply on logs, except cedar, for 170 miles and under. There follows a brief history of the latter rates.

On June 29, 1903, a contract was entered into between the Jacksonville & Southwestern Railroad and the Cummer Lumber Company, controlled by the same interests, under which the former agreed to transport logs for the latter at certain specified rates for a period of 15 years. The Jacksonville & Southwestern extended from Jacksonville southwesterly to Newberry, Fla., approximately 85 miles. The mills of the Cummer Lumber Company were at Mildale, near Jacksonville. Under this contract the rates per car of 50,000 pounds were $4 for distances under 40 miles, $7 for distances from 40 to 60 miles, and $8 for distances from 60 to 90 miles, with $1 per car additional for each 10 miles over 90, the rate from the Suwannee River not to exceed $10 per car. These rates are generally referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and had to assume the obligations of that company under the contract referred to. Upon its expiration in 1918 the contract was not renewed. In the meantime, on January 26, 1914, defendant entered into a similar contract with the Carpenter-O'Brien Company, the predecessor of intervener Brooks-Scanlon Corporation, which was to continue in effect until such time as the timber in Lafayette and Perry Counties, Fla., then owned by the Carpenter-O'Brien Company, consisting of approximately 1,000,000,000 feet of pine, largely tributary to defendant's line extending from Newberry to Perry, Fla., had been transported. The contract provided for movement from points between Clara, and Perry, inclusive, to the plant of the lumber company at Eastport near Jacksonville, 142 to 166 miles, in trainloads of not less than 30 cars per day, or 60 cars

every other day, Sundays and legal holidays excepted, at a rate of $12 per car, minimum 50,000 pounds, excess in proportion. It was stipulated that the contract should be subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. Pursuant to this contract defendant filed schedules with the Florida commission extending the Cummer scale to $11 per car for distances from 110 to 130 miles, and $12 per car for distances from 130 to 150 miles. That commission refused to permit the proposed rates to become effective because they were published to apply only on trainloads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of defendant's Florida lines and became effective October 30, 1914. On July 5, 1916, the scale was extended so as to apply the $12 rate for distances to 160 miles. On April 30, 1919, the scale was further extended by establishing a rate of $16.50 for distances to 170 miles, the latter rate including the 25 per cent general increase of June 25, 1918. These rates were established and, as modified by the subsequent general increases and reduction, have been continued by defendant for the purpose of complying with its contractual obligations and not because it considers the scale proper for general application on intrastate traffic within Florida. The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the Carpenter-O'Brien contract from 1915 to 1926, both inclusive, and on argument defendant estimated that at the rate of movement at that time the contract would have from two to three years more to run. The record also shows that intervener Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties, Fla., estimated to contain 1,207,432,000 feet.

The Florida commission and the Florida interveners contend that the Florida intrastate rates are remunerative to defendant and should not be changed. They neither advocate nor oppose the extension of such rates interstate to Georgia. The intervening carriers contend that defendant's Florida intrastate rates are unreasonably low and are opposed to their continuance and to any reduction in defendant's interstate rates, contending that if the latter are reduced competition will necessitate corresponding reductions in their rates. Defendant does not consider the intrastate rates reasonably compensatory for general application throughout Florida but proposes to continue them, if permitted to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported. It strongly opposes the use of such rates as a measure

of reasonable interstate rates from Florida to Georgia. While not admitting that the interstate rates are unreasonable, defendant submitted a proposal to revise such rates down to the level of the intrastate log rates which became effective June 1, 1935, by an order of the Alabama Public Service Commission. The scale proposed covers distances up to 150 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds. The proposed rates are on substantially the same basis as the present rates under the scales prescribed in *Pierpont Mfg. Co.* v. *S. Ry. Co.*, 50 I. C. C. 81, from points in South Carolina south of Columbia to Savannah, Ga., and in *Southern Veneer Ass'n.* v. *A. C. L. R. R. Co.*, 62 I. C. C. 669, on poplar and gum logs from points in South Carolina to destinations in North Carolina. They are on the same basis as those prescribed in *Southern Cotton Oil Co.* v. *A. C. L. R. R. Co.*, 120 I. C. C. 190, on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant expresses a willingness to establish these rates for interstate application over its entire system except south Florida, and would apply them intrastate in North Carolina, South Carolina, and Georgia if permitted by State authorities. From south Florida defendant would establish interstate rates approximately 15 per cent higher than from north Florida.

The present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles, follow:

Distance	Florida-Georgia state line		Florida-state line		Proposed rates	
	Rate	Earnings	Rate	Earnings	Rate	Earnings
5 miles						
10 miles						
15 miles						
20 miles						
25 miles						
30 miles						
35 miles						
40 miles						
45 miles						
50 miles						
55 miles						
60 miles						
65 miles						
70 miles						
75 miles						
80 miles						
85 miles						
90 miles						
95 miles						
100 miles						
110 miles						
120 miles						
130 miles						
140 miles						
150 miles						
160 miles						
170 miles						

Complainant introduced exhibits showing that defendant's pr
posed interstate rates are higher than its intrastate log rates
various of the southeastern States, than the average of such intr
state rates, and than the combined average of its intrastate an
interstate rates. Rates substantially the same as those proposed
defendant were, however, prescribed by complainant in 1925 fo
application within Georgia, and while complainant's order wa
later rescinded, its rate expert testified that the rates then pre
scribed were in his opinion on a reasonably low basis.

Complainant also submitted numerous comparisons between th
Florida intrastate rates and the interstate rates to show undu
prejudice to interstate shippers to Bainbridge, Albany, Thomas
ville, Quitman, Valdosta, and Waycross, Ga., and undue preferenc
of intrastate shippers to Florida points. No movement from Flor
ida to Georgia is shown and complainant states that there can b
none because of the substantially higher level of the rates inter
state than intrastate. There are 64 sawmills along defendant's lin
in Georgia within 170 miles of Florida, and representatives o
some of them testified that there is available timber in Florida
which could be economically purchased and transported over de
fendant's line to Georgia mills if the rates were reasonable. Th
following will illustrate the comparisons referred to. The charge
per car of 50,000 pounds from Live Oak, Fla., to Jacksonville, 12
miles, are $16, while from Live Oak to Waycross, 83 miles, th
charges are $35.

Defendant submitted evidence purporting to show the estimate
cost of transporting logs of the Brooks-Scanlon Corporation dur
ing September, 1928, from Perry and Carlow to Eastport, Fl
and 150 miles, respectively; 1,371 loaded cars were transporte
in trainloads of from 39 to 50 cars, and the estimated cost pe
loaded car was $20.13. This cost does not include interest on in
vestment except on equipment used. Based on a lading of 60,20
pounds, the average of 982 carloads transported for this shippe
and intervenor Putnam Lumber Company, the rate for the averag
distance would yield revenue of $20.47 per car, but $1.34 over th
estimated cost of service for trainload movements. The Florid
commission also introduced a cost study to show that the intr
state rates are remunerative to defendant. Its estimate was th
$14.62 represents the approximate cost per car of transportin
logs in trainloads between the above points, which, deducted fro
the average revenue per car of $20.47, leaves a net revenue
$5.85 per car. Both cost studies are based on certain arbitrar
assumptions and both are based on movements in trainloads fro
two points of origin to one destination. Neither can be accepted
show the approximate actual cost of transporting logs in sing

carloads intrastate throughout Florida. The record shows that while most of the Florida intrastate log traffic is in trainloads, there is a substantial movement over defendant's line in less than trainloads.

Defendant also shows that the earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement. For example, it shows that the interstate rate on sand and gravel for 160 miles, equivalent to 6.75 cents per 100 pounds, yields revenue of $62.46 per car based on a lading of 92,540 pounds, as contrasted with $18.70 on logs, based on a lading of 55,000 pounds. The weights used were the actual average weights on defendant's lines for 1925. It is also shown that these Florida intrastate rates are considerably lower than any other rates, intrastate or interstate, referred to of record.

Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic; that these interveners have expended millions in the development of their properties, communities have grown up in the vicinity of their mills, and abandonment of the present mill sites would result in heavy losses to them and to their employees; that it would cost intervener Brooks-Scanlon Corporation between three and four million dollars to move its plant from Eastport, which would probably lose most of its 5,000 inhabitants, as practically every family is dependent upon the operation of the plant; and that other Florida lumber companies and communities would be similarly affected. They also testified that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills; and that while there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber.

The intrastate rates which defendant proposes from north Florida are in our opinion reasonable. They are, as heretofore stated, the same as those prescribed by the Alabama commission for intrastate application within that State, and by us for interstate application in other sections of the Southeast. All of the Florida points from which they will apply appear to be located south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reason-

able rates that are higher than from and to other points in southern territory.

It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services. The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level.

We find that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the following distance scale of rates in cents per 100 pounds, minimum weight 40,000 pounds, which rates we find are and will be reasonable:

Distance	Rate	Distance	Rate
	Cents		*Cents*
10 miles and less	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed

by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.

We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of August, A. D. 1928

No. 18364

Georgia Public Service Commission

v.

Atlantic Coast Line Railroad Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which, said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before October 10, 1928, and thereafter to abstain, from publishing, demanding, or collecting its present rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, from and to the points designated in the next succeeding paragraph hereof.

It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before October 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of logs, except walnut, cherry, and cedar, in carloads, from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in the State of Georgia, the following rates in cents per 100 pounds, subject to a minimum weight of 40,000 pounds:

Distance	Rate	Distance	Rate
	Cents		*Cents*
10 miles and less	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads; minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission, division 4.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

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INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANTIC COAST LINE RAILROAD COMPANY

Submitted February 3, 1932. Decided July 5, 1932

On further hearing:

1. Finding in original report, 146 I. C. C. 717, that rates on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, from points in northern Florida to destinations in Georgia for distances of 170 miles and less were unreasonable, affirmed. Present rates found reasonable.
2. Rates on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, applying on shipments between points on the Atlantic Coast Line Railroad Company in Florida for distances of 170 miles and less found unjustly discriminatory against interstate commerce. Nondiscriminatory basis of rates prescribed.

E. M. Price for complainant.

Frank W. Gwathmey, *Carl H. Davis*, *Robert C. Alston*, and *E. W. Moise* for defendant.

Gary D. Landis, attorney general for State of Florida, and *T. T. Turnbull* for Florida Railroad Commission.

H. P. Adair, *C. G. Ashby*, *C. E. Cotterill*, and *August G. Gutheim* for Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company; *J. V. Norman* for Wilson Lumber Company; *T. M. True* for Southern Cypress Manufacturers Association; *Thomas D. Guthrie* and *Russell W. Bennett* for various crate manufacturers, and *E. C. Green* for Jacksonville Traffic Bureau, interveners.

Report of the Commission on Further Hearing

Meyer, *Commissioner:*

In the original report herein, 146 I. C. C. 717, division 4 found that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter called northern Florida, to destinations on its lines in Georgia for distances not exceeding 170 miles would be unreasonable for the future to the extent that they might exceed a certain scale of distance rates prescribed therein. The division further found that the Florida intrastate rates on similar logs for similar hauls, generally referred to as the Cummer scale, resulted,

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and would result, in undue preference and advantage of shippers of intrastate traffic within Florida, in undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia, and in unjust discrimination against interstate commerce, and that said undue preference and advantage, undue prejudice, and unjust discrimination should be removed by establishing rates for intrastate application within Florida which would correspond with the rates found reasonable for interstate application from northern Florida to Georgia. An order carrying these findings into effect was entered on August 2, 1928.

The State of Florida, the members of the Florida Railroad Commission, and certain manufacturers of lumber in Florida, interveners in this proceeding, brought suits in the United States district court to enjoin that part of the order which dealt with the Florida intrastate rates. The court construed the order with respect to the Florida intrastate rates, which read "within the State of Florida," as being limited to points in northern Florida, and as so construed sustained the order. 30 Fed. (2d) 116. Thereafter, division 4 amended its order by inserting an additional exception of logs 6 feet or less in length, and, with respect to the intrastate rates, by substituting for the phrase "within the State of Florida" the words "within and throughout the entire State of Florida, without exception," such substitution being "for the purpose of clarification." On February 8, 1929, the order, amended as indicated, was complied with by the Atlantic Coast Line. Amended bills were filed in the district court and the case there reheard. The Atlantic Coast Line was allowed to intervene in support of the order. The court upheld the amended order, but only on the ground that it aimed at a discrimination against general interstate commerce caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier. 31 Fed. (2d) 580. On appeal, the Supreme Court, dealing particularly with the ground upon which the order was sustained by the lower court, reversed the decree of that court, holding with respect to the Florida intrastate rates that the order was not supported by appropriate findings. *Florida* v. *United States*, 282 U. S. 194. The Supreme Court, among other things, said:

> The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

If the facts as to the intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce, either as between persons or localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

Thereafter, upon petitions filed by complainant and defendant, we reopened the proceeding and assigned it for further hearing, which has been held. A proposed report of the examiners was served upon the parties, to which defendant and interveners filed exceptions, and the case has been orally argued. Our conclusions differ in part from those of the examiners.

Upon rehearing, the Atlantic Coast Line, though nominally the defendant, was in the position of a petitioner under section 13 (3) and (4) of the act seeking relief from what it contends are unduly low State rates.

At the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, if the complaint raises such an issue, which they still question, because of the absence of any legal interest in that issue by complainant and its failure to introduce evidence in support thereof. But, as stated in the report of division 4, the complaint in this proceeding alleges, among other things, that defendant's Florida intrastate rates are unjustly discriminatory against interstate commerce, in violation of section 13 of the act. Evidence pertinent of that issue was introduced. Similar objections made by the Florida interveners before the Supreme Court with respect to the scope of the proceeding were overruled, on the ground that—

as the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company, the rates of which were in question, and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence rather than to mere matters of pleading and procedure;

The court further said:

In making its order, the Commission could exercise all the authority conferred by the interstate commerce act for the purpose of removing such discrimination as was found to exist. If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint.

By section 13 (2) the duty is placed upon us to "investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission," and the same paragraph provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant." See *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 39. Interveners' motion to dismiss is denied.

The effective date of the order entered by division 4 on August 2, 1928, was October 10, 1928. This date was postponed until February 8, 1929, when the rates prescribed were made effective on interstate traffic from northern Florida to Georgia and on intrastate traffic in Florida. The interstate rates have since remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties. The interstate and intrastate rates prescribed applied for distances only up to and including 170 miles. There was no occasion to prescribe either interstate or intrastate rates for greater distances, for the reason that the intrastate (Cummer scale) rates, which were alleged to cause the undue prejudice against shippers and localities in interstate commerce and unjust discrimination against interstate commerce, applied for distances of only 170 miles and less, beyond which the Florida intrastate rates were much higher, distance considered, and were only slightly less than the then prevailing interstate log rates for the same distances.

Following the decision of the Supreme Court, rendered January 5, 1931, which set aside the order in so far as it applied to the Florida intrastate rates, the Cummer scale was restored, effective April 10, 1931, and is now in force. During the period from February 8, 1929, the effective date of the order, to April 10, 1931, the higher rates prescribed by the order were in effect.

The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered.

The history of the Cummer scale was related in considerable detail in the original report. Briefly summarized, it originated in a contract made in 1903 between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company, both then controlled by the same interests. Defendant acquired the properties of the former company in 1904, and assumed its obligations under the contract. During the pendency of the contract defendant entered into a similar agreement with the predecessor of intervener Brooks-Scanlon Corporation in connection with the transporta-

tion of approximately 1 billion feet of pine from Lafayette and Perry Counties, Fla., to its plant at Eastport, near Jacksonville, Fla., in trainloads. The Florida Railroad Commission refused to permit the establishment of the agreed rates in trainloads, and required that such rates as were established should apply on carloads and be available to all shippers on defendant's lines (see Appendix A). Said rates became effective on carload shipments over all of defendant's Florida lines October 30, 1914, and, as modified by subsequent general rate changes (and extended from 150 to 170 miles), have since been in effect, except during the period from February 8, 1929, to April 10, 1931. The Cummer scale never has applied over other railroads nor elsewhere than in Florida on defendant's lines for distances of 170 miles and less.

The rates under the Cummer scale are published in amounts per car of 50,000 pounds, excess in proportion. Certain other rates referred to herein are published in a similar manner. All will be stated in cents per 100 pounds.

Appendix B shows the various scales applying on logs on the most important railroads in southern territory. Column 1 shows the Florida intrastate rates applicable over defendant's lines on the kinds of logs here involved. The rates shown in that column for distances up to and including 170 miles are the Cummer scale rates, beginning with a rate of 1.71 cents for 5 miles and ending with a rate of 3.7 cents for 170 miles. The rates shown in the same column for distances greater than 170 miles are class P rates prescribed by the Florida commission for application on the same kinds of logs. It will be noted that while the Cummer scale rate for 170 miles is 3.7 cents, the Florida commission class P rate for 171 miles is 8.33 cents, or more than twice as high. The Florida commission class P rates were prescribed as maxima for all distances, but the defendant has applied the Cummer scale rates for distances of 170 miles and less, which are substantially lower than the class P rates for those distances, and has maintained the full class P rates for distances over 170 miles.

The rates under the Cummer scale for 5 miles, 110 miles, and 170 miles are 5.03 per cent, 3.54 per cent, and 3.85 per cent, respectively, of the first-class rates for the same distances prescribed by us in *Southern Class Rate Investigation*, 113 I. C. C. 200, 207, 128 I. C. C. 567, for general interstate application throughout the South except to and from that portion of Florida south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, in which transportation conditions were found to warrant a basis of class rates substantially 15 per cent higher.

The scale prescribed in the original report herein is shown in column 5 of Appendix B. That scale had its origin in *Pierpont Mfg. Co.* v. *Sou. Ry. Co.*, 50 I. C. C. 81, wherein division 3 found it to be reasonable and prescribed it for application on the Southern Railway from certain points in South Carolina to Savannah, Ga. In three subsequent cases the scale was reviewed and, as subjected to the general rate changes, was either prescribed or approved for application on logs between various points in the South. *Southern Veneer Asso.* v. *A. C. L. R. R. Co.*, 62 I. C. C. 669, *Southern Cotton Oil Co.* v. *A. C. L. R. R. Co.*, 120 I. C. C. 190, *Sawmill Logs from North Carolina*, 136 I. C. C. 370. Meanwhile, the Alabama commission adopted the same scale and it is now in effect intrastate on defendant's lines in Alabama. The Georgia commission likewise adopted it for intrastate application in that State, but suspended its application because of the existence of the Cummer scale in Florida. The Corporation Commission of Virginia approved the scale for application on defendant's lines in Virginia and it is now in effect in that State. The scale, extended to cover distances up to 450 miles, was proposed by defendant for adoption in this case at the original hearings and defendant expressed willingness to establish it for interstate application over its entire system except south Florida. Although the former order prescribed the scale only from northern Florida to Georgia for distances of 170 miles and less, the defendant later voluntarily established it for uniform application on interstate traffic for all distances over its entire system except from points on its line south of the line of the Seaboard Air Line from Jacksonville to River Junction, from which it established rates 15 per cent higher than from points north of that line. In nearly all instances these rates were reductions from those previously in force.

Columns 3 and 4 of this appendix show the rates applying on logs intrastate in Florida on the Seaboard Air Line and the Georgia Southern and Florida, respectively. It will be noted that the scales applying on these lines are approximately twice as high as the Cummer scale.

Column 2 shows the Florida intrastate rates of defendant and the Seaboard Air Line on logs not over 6 feet in length. These rates were established to permit the movement of short logs which would otherwise go to waste, but which could be used by manufacturers of crates. This scale is somewhat lower than the scale prescribed in the original report herein but is substantially higher than the Cummer scale. (On intrastate traffic in other States and on interstate traffic generally no rate distinction is made as between long and short logs.)

Some southern lines, particularly those operating in the Mississippi Valley, have two scales of log rates, one for ordinary local application, and the other, a scale of net transit or reshipping rates, applying when a certain proportion of the lumber or other manufactured product is shipped over the lines of the carrier delivering the logs. The net transit or reshipping rates are usually lower than the local rates. The interstate net transit scale of the Illinois Central and Mobile & Ohio is typical of such scales. It is shown in column 7 of Appendix B, and is considerably lower than the interstate local scales applying on those lines, which are shown in columns 8 and 9. This net transit scale, except for distances under 20 miles, is more than twice as high as the Cummer scale and compares favorably with the scale prescribed in the original report herein (column 5). The latter scale, hereinafter referred to as defendant's interstate scale, now applies interstate generally between points not only on defendant's lines but also on the Seaboard Air Line and the Southern, and as net transit rates on the Louisville & Nashville. It will thus be seen that this scale or one that compares favorably with it, applies interstate over the lines of the most important carriers in the South. In *Farris Hardwood Lumber Co.* v. *Louisville & N. R. Co.*, 178 I. C. C. 671, division 4 prescribed gross (local) rates on logs from numerous origins in the South to destinations in Tennessee, which rates are considerably higher than defendant's interstate scale. The single-line scale prescribed in that case is shown in column 6 of Appendix B.

In Appendix C the Cummer scale is compared with defendant's intrastate log rates in other southern States. It will be noted that the rates applicable in Virginia and Alabama, which were approved by the regulatory bodies of those States, are the same as defendant's interstate scale; that in Georgia the local rates are somewhat higher and the transit rates somewhat lower than defendant's interstate scale; and that the North Carolina and South Carolina rates are somewhat lower than defendant's interstate scale but average considerably higher than the Cummer scale. Applications are pending before the proper authorities to permit the establishment of defendant's interstate scale uniformly on intrastate traffic throughout those States, approval of which, it is testified, has been withheld because of the low intrastate rates in Florida.

Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on defendant's system outside of Florida. The cost of the

service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereinafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere. The following table shows the traffic density, in revenue ton-miles per mile of road on defendant's system as a whole, on its lines in Florida, and on its system excluding Florida:

Period	System	Florida	System, excluding Florida	Period	System	Florida	System, excluding Florida
	Ton-miles	*Ton-miles*	*Ton-miles*		*Ton-miles*	*Ton-miles*	*Ton-miles*
Year 1921	514,955	341,152	618,635	Year 1926	963,569	869,411	1,021,610
Year 1922	624,760	409,026	754,341	Year 1927	747,717	570,932	861,713
Year 1923	764,228	512,505	915,990	Year 1928	647,542	442,245	781,682
Year 1924	774,029	570,583	897,150	Year 1929	637,039	400,002	794,395
Year 1925	907,958	740,633	1,009,225	Year 1930	556,771	369,979	698,395

The Florida mileage increased from 37.4 per cent of the system mileage in 1921 to 40 per cent in 1930. It appears that the increase in traffic density on the system during 1925 and 1926 followed closely the increase in traffic density in Florida during those years.

In the Florida peninsula the traffic density is even lighter than in the northern part of Florida, that is, north of the Jacksonville-River Junction line of the Seaboard Air Line. In 1927 there were 894.54 miles of railroad in Florida north of that line that were operated for freight traffic, and 4,183.01 miles in Florida south of that line. The traffic density of the lines in Florida north of that line was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles per mile of railroad south of that line. The less favorable operating conditions in Florida south of that line have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. See *Southern Class Rate Investigation*, 100 I. C. C. 513, 585, 626, 646; 128 I. C. C. 567, 594, 602.

The risk in transporting logs is small in so far as loss or damage to the logs is concerned but there is a much greater risk arising from the probability of a train wreck in the event the logs break loose.

The Cummer scale is much lower than the basis of rates prescribed for application throughout central territory in *Indiana Public Service Commission* v. *A. A. R. Co.*, 85 I. C. C. 533. Rates equal to 65 per cent of the sixth-class rates contemporaneously in effect between the same points were there found to be reasonable rates. The order there entered resulted in rates on logs ranging from 5.20 cents for 5 miles to 20.80 cents for 560 miles, the rate for 170 miles being 12.35 cents, whereas the Cummer scale rates for 5 miles and 170 miles are

1.71 cents and 3.70 cents, respectively. The report in that case referred to "the lower operating costs and the greater traffic density" in central territory than in southern territory.

So far as the record in this case shows there is no other scale of rates on logs as low as the Cummer scale.

Defendant's interstate scale and the Cummer scale are compared with the rates on other important low-grade commodities in Appendix D. The freight charges per car under the rates shown are also compared. The rates shown on these other low-grade commodities are the rates applicable between Georgia and Florida, but substantially the same level of rates applies intrastate in northern Florida. Approximately 40 per cent of the total tonnage transported by defendant consists of these low-grade commodities, and a substantial portion of defendant's total freight revenues is derived from their transportation, as is indicated by the following results of a traffic test for the month of May, 1926:

Commodity	Percentage of all tonnage	Percentage of all freight revenue	Value per ton
Logs	7.26	2.05	$2.80
Brick and artificial stone	3.30	2.32	
Sand and gravel	26.49	9.16	0.35 to 1.35
Lime and plaster	.46	.39	
Cement	2.29	2.05	7.48

The above evidence warrants the conclusion that the Cummer scale rates are abnormally low. Upon similar evidence submitted at the original hearing division 4 found that they are "less than reasonably compensatory." We affirm that finding. In its report division 4 said:

> It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services.

In considering the question of the relation of the Cummer scale rates to the defendant's income, we may notice what the defendant's

income is. The evidence here shows the investment in defendant's properties as stated in its property investment accounts and its rate of return upon that amount. In 1926 its rate of return on investment in road and equipment, not including materials and supplies and cash, was 6.50 per cent. In the subsequent years up to the time of the rehearing its rate of return was as follows: 1927, 3.70 per cent; 1928, 3.52 per cent; 1929, 4.55 per cent; 1930, 2.54 per cent. The following tabulation shows the supporting figures for the years 1926, 1929, and 1930:

	1926	1929	1930
Investment in road and equipment	$270,564,508	$282,918,571	$285,343,512
Materials and supplies	8,699,718	6,386,742	6,701,666
Cash	8,494,003	17,133,937	13,932,421
Total property investment at end of year	287,758,229	306,439,250	305,977,599
Net railway operating income	17,585,807	12,874,207	7,241,304
Rate of return:			
On investment in road and quipment ..... per cent	6.50	4.55	2.54
On investment in road and equipment, including materials and supplies ..... per cent	6.30	4.45	2.48
On investment in road and equipment, including materials and supplies and cash ..... per cent	6.11	4.20	2.37

The defendant's Florida log traffic is an important one and the revenue from that traffic has a substantial influence upon the defendant's total revenues. During the 5-year period, 1926–1930, system log traffic averaged 7 per cent of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida. For instance, in 1928, the defendant transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida.

The following table contains a brief analysis of the log traffic of the system as a whole and on its lines in Florida for the years 1928–1930:

	1928	1929	1930
System:			
Total traffic ..... tons	20,402,922	18,951,802	16,784,331
Log traffic ..... tons	1,422,874	949,840	667,612
Percentage of log traffic to total traffic ..... per cent	7.0	5.0	4.0
Total revenue	$52,019,283	$53,188,639	$46,428,030
Log revenue	$997,139	$794,334	$615,393
Percentage of log revenue to total revenue ..... per cent	1.9	1.5	1.3
Florida:			
Total Florida traffic ..... tons	8,622,556	8,547,924	7,660,058
Florida log traffic ..... tons	814,777	366,426	272,150
Percentage of Florida log traffic to total Florida traffic ..... per cent	9.4	4.3	3.6

The above figures reflect the small revenue burden borne by the log traffic. In 1928, for instance, the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue.

The above analysis further shows that the revenue from the system log traffic did not decline proportionately with the volume of that traffic. In 1930 the log traffic of the system was 667,612 tons as compared with 1,422,874 tons in 1928, whereas the revenue from the 1930 log traffic was $615,393 as compared with $997,139 in 1928. Stated in percentages, in 1930 as compared with 1928 the log traffic of the system declined more than 50 per cent but the system log revenue declined only 38 per cent. The smaller decline in the revenue was no doubt due to the fact that in 1928 the Cummer scale was in effect whereas throughout 1930 the increased rates prescribed by the former order herein were collected.

Of much assistance in the determination of the effect of increased intrastate log rates in Florida on the revenues of defendant is the fact that the increased rates prescribed by the former order were actually in effect for a substantial period and were applied on the traffic moving during that period. Defendant submitted in evidence at the hearing in June, 1931, a statement showing all shipments of the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929, to January 31, 1931. This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.[1]

Averring that there is no condition at any point on its lines that would justify higher rates on logs than those applicable within the State of Florida, defendant submitted testimony to the following effect, showing that the existence of low log rates in one State has an influence upon the log rates in other States. The record in the present case shows the influence upon the Georgia rates of the intrastate rates in Florida. In South Carolina the State commission at first approved defendant's present interstate rates for intrastate application but later reduced them because the rates in North Carolina were lower. In the case that is now before the North Carolina commission the existence of rates between points in Virginia on a line other than defendant's is one of the principal obstacles to securing the application of defendant's uniform scale in North Carolina. In every case involving defendant's interstate rates on logs the existence of lower levels of rates within some of the States served by

[1] Restitution suits for the recovery of all amounts paid in excess of the Cummer scale rates on shipments during the period from February 8, 1929, to April 10, 1931, when the higher intrastate rates prescribed by the annulled order of division 4 prevailed, were instituted and are pending.

defendant has been urged as a justification for lower interstate rates on logs.

Defendant submitted the following evidence to show the total losses it would have sustained had the Cummer scale been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system. The movement of logs on its system, including the long but not the short length logs in Florida, consisted of 3,450,765,300 pounds,[2] of which the interstate movement consisted of 456,134,800 pounds and the intrastate 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,424.87,[2] of which the revenue on interstate movements amounted to $266,654.12, and on intrastate to $1,216,770.75. If the Cummer scale had been applicable on all its log movements the reduction in revenues would have been approximately as follows:

Intrastate:	
Virginia	$2,926.20
North Carolina	95,804.17
South Carolina	99,793.77
Georgia	29,068.53
Florida	290,283.19
Alabama	13,245.47
Interstate	144,259.88
Total	675,381.21

These figures represent approximate losses, as they are not based upon an actual rerating of the tonnage, except upon the long-length logs in Florida, the losses on the interstate movement and on the intrastate movements other than in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.

If defendant's present interstate scale had applied uniformly on intrastate traffic on its system in 1929 and 1930 that scale would have had the following effect upon the defendant's revenues if the traffic had been the same. There would have been an increase in revenues in North Carolina of $65,427.27, in South Carolina $7,154.14, in Georgia $14,567.52, a total increase of $87,229.90. There would, of course, have been no change in Florida, in Virginia, or in Alabama, because the present interstate scale was then in effect in those States. Nor would there have been any change in interstate traffic because the defendant's present interstate scale was then in effect.

The Florida interveners contend that the increase in the Florida intrastate rates has had the effect of reducing the volume of the

[2] These figures do not exactly correspond with those given in the table set out above, but the variance is so slight that it is negligible.

Florida log traffic and that as a consequence there has been a decrease in the defendant's revenue from that traffic. It is true that since the original hearings in this proceeding (October, 1926, and January, 1927) there has been a decrease in the volume of the Florida intrastate log movement. The extent of this decrease is indicated in the following table showing the number of cars and the tonnage transported therein during the five years 1926–1930:

Period	Cars	Tons	Period	Cars	Tons
Year 1926	36,799	1,214,361	Year 1929	13,207	366,426
Year 1927	35,415	1,052,927	Year 1930	9,376	272,150
Year 1928	27,119	814,777			

The figures for 1926 and 1927 must be discounted somewhat for the reason that they include posts, poles, and cordwood as well as logs. The statistics for those years grouped the four commodities and information as to the exact number of cars and tons of logs that moved is not available.

Part of the decline in the Florida log traffic has been due to the fact that two lumber companies which operated mills near Jacksonville at the time of the original hearings, the Brooks-Scanlon Corporation at Eastport and the Putnam Lumber Company at Milldale and Ortega, have since moved their plants to locations adjacent to their timber holdings and no longer ship their logs over defendant's lines. At the time of the original hearings these companies drew their logs, usually in trainload lots, from points on defendant's Perry branch, about 166 miles west of Jacksonville. There was evidence to the effect that it was uneconomical for mills to be located so far from the timber and that even the Cummer scale rate for that distance, 3.7 cents, was higher than these mills could afford to pay. The Putnam Lumber Company then indicated its intention to abandon those mills and to develop a plant in the timber. In 1926 it acquired a mill at Bond's Mill, about 85 miles south of Jacksonville, and in 1927 and 1928 it completed the construction of two mills at Cross City, on defendant's Perry branch. Shortly after the intrastate rates were increased in February, 1929, the Brooks-Scanlon Corporation began the construction of a mill at Foley, about 5.5 miles southwest of Perry. Upon the completion of that mill the one at Eastport was abandoned. During the 6-year period from 1923 to 1928 the defendant's gross revenues from the movement to Eastport averaged $309,882.60 a year. Defendant's gross revenues from the movements to the Putnam mills averaged slightly more than $200,000 a year. This movement would have been discontinued

even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase.

The defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects, first, it has rendered unnecessary the transportation of the logs at the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale. The average weight of 983 cars of logs handled under the Cummer scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, the average haul was 158 miles, and the revenue was $20.47 per car, or 12.9 cents per car-mile. In 1930, 90 per cent of the lumber movement from Foley and 70 per cent of the lumber movement from Cross City to destinations on defendant's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville is 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville, 169 miles, is $47.53, which equals 28.1 cents per car-mile. The rate on lumber from Cross City to Jacksonville, 118 miles, is 8⅓ cents, producing revenue of $43.33 per car or 36.7 cents per car-mile.

Another large movement at the time of the original hearings was from Otter Creek, a point on defendant's Perry branch, to the mill of the Cummer Cypress Company at Lacoochee. This movement, which was in trainload lots, began in January, 1926, and ended on May 5, 1928, which was after the original hearings but prior to the decision of division 4 herein, August 2, 1928. This movement ended not because of the rate increase but because of the exhaustion of the company's timber near Otter Creek. Defendant's gross revenues from this movement aggregated $120,261.40. In January, 1929, the Cummer Company began to ship logs from Homosassa over defendant's line to Otter Creek, where it operated a small secondary plant, and it continued this movement after the increased intrastate rates became effective on February 8, 1929. In April, 1929, it began to ship cypress logs from Homosassa to its mill at Lacoochee, over defendant's line. In February, 1930, the movement from Homosassa to both Otter Creek and Lacoochee ended, and since then the Cummer Cypress Company has shipped no logs over the defendant's lines. Defendant's gross revenues from the Homosassa-Otter Creek

movement were $13,507.09 and those from the Homosassa-Lacoochee movement were $77,609.89. These movements were stopped in February, 1930, not because of the rate increase, for the movements continued for a year after the increase became effective, but because the timber at Homosassa was practically cut out, although some additional logs of inferior grade would probably have been cut and shipped had the Cummer scale remained in force. Its present supply of logs from timber on the Withlacoochee River is hauled over its own logging road to the Seaboard Air Line and thence over that line under trackage rights for a short distance to its mill at Lacoochee.

Representatives of these three interveners, the Putnam Lumber Company, the Brooks-Scanlon Corporation, and the Cummer Cypress Company, testified at the further hearings that they would not resume the shipment of their logs over defendant's lines even if the Cummer scale remained in effect.

The fact that the total movement during the period of nearly two years from February 8, 1929, to January 31, 1931, consisted of 18,602 carloads was verified by an investigation conducted by interveners; and their evidence, after eliminating 7,353 cars which moved in trainload lots from Hines to Palatka, showed that of the remaining volume (11,169 cars) 7,965 cars moved in the period from February 8, 1929, to January 31, 1930, and 3,204 cars in the succeeding 12 months. (They were unable to develop when 81 cars moved.)

Interveners' data also showed the following with respect to these 11,169 carloads:

	Pine		Cypress		Hardwood	
	Cars	Revenue	Cars	Revenue	Cars	Revenue
First period	1,282	$31,052.33	2,890	$73,866.90	3,793	$96,971.97
Second period	296	5,288.84	1,556	36,387.01	1,342	28,658.90

From what has been said above it is clear that the decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of the timber. The generally depressed conditions throughout the country, in Florida, in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida. The

table below shows the decline in the total system traffic and in the system log traffic during the 5-year period 1926–1930:

Period	Total traffic		Log traffic	
	Cars	Tons	Cars	Tons
Year 1926	944,101	27,025,422	[1] 79,114	[1] 2,196,971
Year 1927	859,049	23,134,496	[1] 78,532	[1] 2,056,593
Year 1928	752,778	20,402,922	51,801	1,422,874
Year 1929	718,549	18,951,802	37,206	949,840
Year 1930	621,232	16,784,331	25,738	667,612

[1] Includes posts, poles, and cordwood.

Likewise there has been a decline in the lumber traffic throughout the United States, in the southern district, and on the defendant's system, as shown by the following table which also shows the gross revenues received by defendant for the lumber tonnage transported over its lines:

	United States	Southern district	Atlantic Coast Line	Atlantic Coast Line gross revenue
	Tons	*Tons*	*Tons*	
Year 1920	48,617,871	17,708,828	2,665,512	$5,503,389.44
Year 1925	49,015,498	20,311,619	3,751,916	8,092,819.86
Year 1928	42,508,620	17,872,965	3,093,168	6,641,449.38
Year 1929	40,565,975	17,403,907	3,109,401	6,750,434.28
Year 1930	27,584,148	11,395,877	2,211,258	4,711,383.72

Thus, while there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in other traffic were also no doubt responsible for much of the decline in the Florida log traffic.

Coming now to consideration of the probable future volume of the Florida log traffic, it is relevant to inquire into the total amount of standing timber now in Florida and how much of the total is reasonably tributary to the defendant's lines.

The record indicates that, unlike most of the other southern States, vast stands of virgin timber remain in Florida. An official bulletin of the United States Department of Agriculture (Circular 124, October, 1930, entitled "Rate of Growth of Second-Growth Southern Pines in Full Stands") indicates that in 1927 there remained in the 11 chief pine-producing States of the South 12,650,000 acres of virgin pine, of which 5,450,000 acres, or 43 per cent, were in Florida. That bulletin also states that in addition to this area of virgin pine, there is an area of 12,550,000 acres of cut-over pine lands in Florida, of which 3,150,000 acres have been fully or partially restocked to saw timber, and 4,300,000 acres fully or partially restocked to saplings and cordwood.

The figures published in the department's bulletin were based chiefly on a survey of standing pine timber made in the main producing regions from Virginia to Texas in 1924. The department's bulletin states that this survey, which was conducted by the Southern Pine Association—

> is believed to be the most accurate survey of timber resources yet made in any important lumber-producing region of the United States. The data were obtained in the form of board feet, but have been converted into acreages for the purpose of this bulletin. The computed figures have been checked against the local knowledge of State and Federal forest officers and other authorities.

A compendium published by the Southern Pine Association, entitled "Economic Conditions in Southern Pine Industry," presented by the association to the United States Timber Conservation Board, dated July 1, 1931, shows the number of board feet in the acreages published in the department's bulletin. The 1924 survey showed that in Florida the pine-timber stand was 21.382 billion feet of longleaf and 2.966 billion feet of shortleaf, or a total of 24.348 billion feet of pine. The production in Florida during the six years 1925–1930 totaled 4.564 billion feet, the regrowth in those six years being 2.129 billion feet, or a net depletion of 2.435 billion feet, leaving the then present (July, 1931) pine-timber stand in Florida 21.913 billion feet.

The above figures include pine only. That species of wood is of primary importance in the Florida lumber industry. Cypress is second in importance, and hardwoods such as ash, gum, hickory, cedar, and oak, are third.[3] The record contains no figures as to the stands of cypress and hardwoods in Florida, but there is testimony as to the production, indicating that the annual production of cypress in Florida is around 200,000,000 feet, and that hardwood constitutes probably 5 to 10 per cent of the total business.

The record affords no accurate basis of determining how much of the standing timber in Florida is tributary to the Atlantic Coast Line. By reference to the map of that railroad in Florida, however, it will be seen that its main and branch lines form a network which virtually covers the State, except the extreme southeastern part. This fact, in connection with the practice of constructing logging roads, seems to indicate that a large percentage of the standing

[3] The Gummer scale applies on all species of logs except cedar. The interstate rates found unreasonable in the original report herein applied on all species of logs except walnut, cherry, and cedar. For this reason, the former order in prescribing interstate and intrastate rates on logs excepted those three species. The exception is unimportant in so far as walnut and cherry are concerned, for there appears to be no movement of those species of logs in Florida. The term "hardwood" as used hereinafter will be used to mean hardwoods other than those three.

timber in Florida is tributary to defendant's lines. The defendant's freight-traffic manager testified:

> Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the south Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40 per cent of the logs to be produced in Florida from timber now standing, it will handle approximately 9 billion feet, or approximately 128,570 cars of logs. If the average length of haul should be 81 miles, as was the case in 1929-30, which average haul may be expected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be $4,949,945. The difference in the gross revenue under the two scales of rates would be $2,779,968.

A large movement of logs which was going on at the time of the original hearings, and which still continues, is the movement of cypress logs from Hines, a point on defendant's Perry branch, to the lumber-manufacturing plant of the Wilson Cypress Company at Palatka. This Hines-Palatka movement, which is in trainload lots, began in January, 1926. The company has its own logging road in the timber, connecting with the defendant's line at Hines, from which the haul to Palatka is 119 miles. Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over the defendant's line until the timber adjacent to the Perry branch is cut out. Under the normal rate of cutting, it appears this would occur in about one and one-half to two years after the time of the further hearing. During the 4-year period, 1926–1929, the defendant's gross revenue from the Hines-Palatka movement averaged nearly $90,000 a year. During that 4-year period 16,658 carloads were shipped, averaging 4,164 carloads a year. During 1930, when the increased rates were in effect, 5,142 carloads were shipped, on which the defendant's gross revenue was $205,096.20, averaging $39.88 per car at the increased rate of 6.5 cents for the 119-mile haul. During the first five months of 1931, 1,916 cars moved on which the freight charges (gross revenue of defendant) amounted to $50,366.17. Palatka is served by the Southern Railway system (Georgia Southern & Florida Railway) and by the Florida East Coast Railway, as well as by defendant's line. There is a small movement of logs into the Wilson Cypress Company's mill at Palatka over the South-

ern and the Florida East Coast. Besides the movement over defendant's line from Hines there is a small movement over defendant's lines from various other points in Florida.

There is also present a small movement over defendant's lines from various Florida points to the mill of the Putnam Lumber Company at Bonds Mill and a larger movement to the mill of that company at Cross City. During the period from February 8, 1929, to January 31, 1931, the movement to Cross City consisted of 1,260 carloads of pine and cypress logs from seven different points of origin. During the succeeding five months the movement to Cross City was 102 carloads from three points of origin.

Although the Cummer Cypress Company no longer ships its logs over defendant's lines, it does purchase and receive logs shipped over defendant's lines to its mill at Lacoochee from points within distances of 10 to 18 miles. During the 5-month period above mentioned this movement totaled 93 cars.

In addition to the above-mentioned movements to Palatka, Bonds Mill, Cross City, and Lacoochee, there were movements during said 5-month period to Apopka, Buffalo Bluff, Gainesville, Jacksonville, Kissimmee, Lake City, Loughman, Leesburg, Nocatee, Perry, St. Petersburg, Sanford, and Tampa, from numerous points of origin.

At the time of the former hearings there was and at present there is a substantial movement of hardwood logs in Florida. There are several mills in the State that are engaged exclusively in the production of hardwood lumber, including that of the intervener Wilson Lumber Company at Perry. Hardwood trees are usually found in tracts consisting predominantly of pine and cypress and are usually logged as an incident to, or by-product of, the pine or cypress operations. The hardwood-lumber business is relatively new in Florida. Formerly the hardwood trees were left standing but now it is the practice of the pine or cypress operators to cut the hardwood and sell the logs to the hardwood mills. In some instances the hardwood operators own their own tracts of timber. The Wilson Lumber Company built its hardwood mill at Perry in 1927. At that time it made contracts with several of the large pine and cypress operators in Florida for the purchase of the hardwood logs cut incidentally to their operations. There have been fairly large movements of ash, black gum and other hardwood logs from Hines, Cross City, Foley, Homosassa, Otter Creek, and other points to Perry. There have also been some movements of hardwood as well as cypress to Jacksonville. As shown by the table set out above, 5,135 carloads of hardwood logs moved over defendant's lines in Florida during the period February 8, 1929, to January 31, 1931.

"Another type of log movement that frequently takes place in Florida is the movement from the log-shipping point of one lumber manufacturer to the mill of another lumber manufacturer. Such movements occur where the lumber company that cuts the logs is engaged in the manufacture and sale of a particular kind of lumber, e. g., pine, and sells its cypress logs to a cypress-lumber manufacturer. Conversely, the pine manufacturer often buys pine logs cut by a cypress manufacturer.

The 18,602 cars which moved during the period from February 8, 1929, to January 31, 1931, were shipped from 113 different origins to 20 different destinations in all parts of the State, and the hauls ranged from 6 to 169 miles. At the hearing in July, 1931, defendant submitted a supplemental statement showing that the volume of the log movement over its lines in Florida during the succeeding five months, that is, from February 1 to June 30, 1931, which were the five months immediately preceding the hearing, was 2,765 cars. (The Cummer scale was restored during that period, April 10, 1931.) These cars were shipped from 52 different stations to 17 different destinations.

The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better.

In the Florida log transportation some competition from trucks is met but only to a very slight degree. It is not shown that logs can or will be transported by trucks except for very short distances, nor that truck competition was or will be increased under advanced rates.

The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defend-

ant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses.

The defendant's cost evidence started with figures showing that during the fiscal year ended June 30, 1929, the following road train expenses were incurred in transporting its system freight traffic.

Account	Expenses
No. 401. Trainmen	$2,048,715
No. 392. Train enginemen	1,571,324
No. 394. Fuel for train locomotives	2,281,332
No. 397. Water for train locomotives	96,575
No. 398. Lubricants for train locomotives	42,283
No. 399. Other supplies for train locomotives	29,281
No. 400. Engine-house expenses—Train	450,414
No. 402. Train supplies and expenses	400,760
Total	6,920,684

These expenses are denominated in the testimony and exhibits of record as out-of-pocket expenses and that term will be used herein, although it should be understood that it has reference only to the particular expenses charged to the above-enumerated accounts.

An analysis was then made of the accounts of the third division which could be definitely assigned to the freight service without question to develop the out-of-pocket costs for that division. The third division is wholly in Florida, and includes all mileage south of Jacksonville. The carrier's total mileage in Florida is 2,061.38 miles, all of which, except 126.34 miles north and west of Jacksonville, is in the third division. Hence, the out-of-pocket expenses on the third division were taken as fairly representative of the out-of-pocket expenses in Florida. Taking into consideration the total tonnage carried and the distance of the carriage, and including the empty-car mileage, the out-of-pocket cost per gross ton-mile was determined. For the third division that figure was ascertained to be 0.0882888 cent. The items which made up the total out-of-pocket expenses for the third division were:

Account	Expenses
No. 401. Trainmen	$637,337.05
No. 392. Train enginemen	497,364.58
No. 394. Fuel for train locomotives	606,920.94
No. 397. Water for train locomotives	28,406.12
No. 398. Lubricants for train locomotives	15,379.52
No. 399. Other supplies for train locomotives	9,575.70
No. 400. Engine-house expenses—Train	126,854.35
No. 402. Train supplies and expenses	137,772.40
Total	2,059,610.66

The gross ton-miles in Florida during the fiscal year were 2,332,812,000, which, divided into the total out-of-pocket expenses during that year, $2,059,610.66, resulted in the figure 0.0882888 cent per gross ton-mile. The out-of-pocket expense on the other two divisions combined, similarly reduced to the unit of gross ton-miles, was 0.053263 cent. An analysis was also made of the out-of-pocket costs on the car-mile basis, which gave final cost figures not materially different from those developed on the gross ton-mile basis hereinafter stated.

The total freight operating expenses of the system during the year 1929 were $36,308,813,[4] over five times the system out-of-pocket expenses of $6,920,684. The exact ratio of the latter to the former is 19.069.[5] If this ratio is used as a basis of expanding or projecting the out-of-pocket expenses to determine the total freight operating expenses in Florida, the latter is found to be 0.462996 cent per gross ton-mile.

The weighted-average distance of the 18,602 carloads of logs transported by defendant in Florida during the period from February 8, 1929, to January 31, 1931, was 81.36 miles, the average weight of the lading was 56,754 pounds, and the tare weight of the cars was 33,000 pounds, resulting in a gross weight of the loaded movement of 89,754 pounds. The testimony is to the effect that the log cars were returned empty almost without exception. Using 100 per cent as the proper figure for return empty movement, the gross weight of the loaded and empty movements was 122,754 pounds or 61.377 tons. The latter figure multiplied by 81.36 miles gives the gross ton-miles as 4,994. The unit cost of 0.462996 cent per gross ton-mile applied to 4,994 gross ton-miles results in a cost of $23.12 per car. This figure includes nothing for taxes or interest on investment. When $3.56 per car, as the proportion of taxes paid by defendant to the State of Florida, and $7.62 per car as the proportion of interest on investment of 5.75 per cent, are added, the cost becomes $34.30 per car.

The defendant did not present the figure $34.30 per car as representing the actual cost of the service, but stated that it was greater than the cost because it included certain expenses which were not attributable to the handling of logs. Defendant also presented another figure, $25.23 per car, based on the ratio of system out-of-

[4] The primary segregation of total operating expenses as between freight and passenger was made in accordance with the formula which we have prescribed. See order of Dec. 1, 1919, effective Jan. 1, 1920, providing rules for the separation of operating expenses between freight and passenger service on large steam roads. The total operating expenses were $53,431,589. The proportion assigned to freight under that formula, $36,308,813, was 67.95 per cent of the total.

[5] Exhibits of record erroneously show this ratio as 23.549. Defendant agreed that the correct ratio is 19.069.

pocket expenses to total system freight operating expenses after many deductions were made from the latter. There were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all amounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, and industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,352.20. There would seem to be no doubt but that a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,769. The grand total thus eliminated aggregated $9,629,744.

This aggregate was deducted from the total freight operating expenses of $36,308,813, leaving the sum of $26,679,069 denominated the "total haulage expenses." The ratio of the total system out-of-pocket expenses, $6,920,684, to the total haulage expenses, $26,679,069, is 25.9405.[6]

Use of this ratio results in a unit figure of 0.340351 cent per gross ton-mile (0.0882888 cent, divided by 25.9405, multiplied by 100). This results in a haulage cost of $17 per car. When a proportionate amount is added for Florida property taxes, $2.62 per car, the haulage cost plus taxes becomes $19.62 per car. A proportionate amount added to that figure as representing interest on investment at 5.75 per cent, $5.61 per car, results in a final figure of $25.23 per car.

The defendant's general auditor testified that the actual cost lies somewhere between $18.75[7] and $34.30 per car; that in determining the lower figure he eliminated over $9,000,000 of expenses embracing all yard items and certain other items, some of which expenses are properly attributable to the handling of logs, and that this figure

[6] This ratio is erroneously shown in exhibits of record as 35.027. As a result of the error the cost figures were shown to be lower than they would have been if the correct ratio had been used.

[7] This figure is based on the erroneous ratio of 35.027. When recalculated on basis of the correct ratio of 25.9405 it becomes $25.23.

understates the cost of handling logs; but from his experience in studying accounts he does not believe it would be proper to include all of the expenses included in the higher figure, and that therefore the cost lies somewhere between the two. Based on his survey of the application of the Cummer scale rates, and from his experience as an accountant, he expressed the opinion that the Cummer scale does not afford a revenue which is equal to the cost of doing the business covered thereby; that as shown by the exhibits filed, in practically every case the cost, including a reasonable return on investment, exceeds the revenue derived, and in some instances the operating expenses exceed the revenue, without including any taxes or return on investment.

The average revenue under the Cummer scale on the 18,602 cars above referred to was $15.12 per car. The rates prescribed by the order previously entered in this proceeding were in force during the period in which all of these 18,602 cars moved, and the defendant's actual aggregate gross revenue on them was $571,508.94. Had the Cummer scale been in effect, the aggregate gross revenue would have been $281,225.75. The latter sum, divided by 18,602, gives the above-stated average revenue per car under the Cummer scale, $15.12 per car. It will be noted that this revenue is substantially below either of the two cost figures mentioned above, $25.23 per car and $34.30 per car. It is $1.88 per car less than the haulage cost stated above, $17 per car.

The unit cost as given above, 0.340351 cent per gross ton-mile as the purely haulage cost, and 0.462996 cent per gross ton-mile as the total operating cost, as applied to specific movements, results in the following figures, with which are included for comparative purposes the figures for the averages of the total movement of 18,602 cars referred to above:

Movement	Miles	Per car				
		Revenue on Cummer scale	Purely haulage expense [1]	Purely haulage expense plus taxes and return	Total operating expense [2]	Total operating expense plus taxes and return
Average of 18,602 cars during period Feb. 8, 1929, to Jan. 31, 1931	81.36	$15.12	$17.00	$25.23	$23.12	$34.30
Homosassa to Lacoochee	68.00	12.44	13.58	20.15	18.47	27.40
Homosassa to Otter Creek	52.00	12.02	10.80	16.06	14.69	21.79
Perry to Eastport	169.00	22.10	36.16	53.65	49.19	72.98
Carbur to Eastport	152.00	20.30	32.52	48.25	44.23	65.63
Homosassa to Perry	130.00	20.62	28.80	42.73	39.18	58.13
Astor to Groveland	99.00	13.78	19.54	28.99	26.58	39.43

[1] Based on unit cost of 0.340351 cent per gross ton-mile.
[2] Based on unit cost of 0.462996 cent per gross ton-mile.

Defendant also submitted evidence showing the actual out-of-pocket expenses for the movement of logs from Hines to Palatka during the month of November, 1930, agreed to be typical of the year 1930. This evidence discloses the results of a special examination of the expenses incurred in connection with that particular movement. The Wilson Cypress Company operates a private logging railroad from its tract of timber to a point of connection with defendant's line at Hines. The cars used in this service are ordinary flat cars owned by defendant but specially assigned to the Wilson Cypress Company, which has equipped them with special devices for log transportation. This special equipment, owned and maintained by the lumber company, consists of four stanchions on each side of the car, which fit into pockets of a design which permits release of the stanchions to facilitate quick unloading. Chains fastened to the stanchions hold the logs in place, and permit the car to be loaded more heavily than a car staked in the ordinary way. The cars are loaded in the timber and the trains are hauled by the lumber company over its logging road to Hines. The defendant transports the trains to Palatka, 119 miles, and makes delivery at the lumber company's plant. A trainload of 40 to 45 cars moves from Hines to Palatka every other day. The actual time consumed in the trip from Hines to Palatka is about eight hours.

During the month in question this log movement amounted to 3,734,936 gross ton-miles, whereas the movement between Hines and Palatka other than logs was only 128,515 gross ton-miles. Inasmuch as the latter is only 3.3 per cent of the total movement, the out-of-pocket expenses for the movement of the trains, reduced to the gross ton-mile basis, may be taken as fairly reflecting the out-of-pocket expenses attributable to logs.

The out-of-pocket expense for the total traffic, 3,863,451 gross ton-miles, was $2,398.55, made up as follows:

Account	Expense
No. 392, Train enginemen	$506.19
No. 394, Fuel for train locomotives	1,138.49
No. 397, Water for train locomotives	39.50
No. 398, Lubricants for train locomotives	8.27
No. 399, Other supplies for train locomotives	8.82
No. 400, Enginehouse expenses—Train	19.05
No. 401, Trainmen	562.86
No. 402, Train supplies and expenses	115.37
Total	2,398.55

This resulted in an out-of-pocket expense for this movement of 0.0620831 cent per gross ton-mile. The average loading of the log cars from Hines to Palatka during November, 1930, was 64.000

pounds and the tare weight of the cars was 33,000 pounds, resulting in a gross weight on the loaded movement of 97,000 pounds, and, since the return-empty movement of these cars is 100 per cent, there should be added the tare weight of the car for the empty movement, making the gross weight of the loaded and empty movement 130,000 pounds, or 65 tons. Thus, 65 tons were transported 119 miles, equivalent to 7,735 gross ton-miles for each car. If the out-of-pocket expenses on this movement, 0.0620831 cent per gross ton-mile, were 25.9405 per cent of the total haulage expenses, as they were on the system as a whole, then the total haulage expenses on this movement were $18.51 per car. When 6 cents per car for Federal income taxes, and $2.85 per car for Florida taxes are added, the haulage cost plus taxes is $21.42, and if $6.10 as representing a proportionate share of interest on investment at 5.75 per cent is added to the latter figure, the haulage cost plus taxes and return becomes $27.52 per car.

During the month in question the rates prescribed by the former order were in effect. The rate prescribed for the distance from Hines to Palatka, 119 miles, was 6.5 cents. This rate applied to the average weight of the Hines-Palatka shipments, 64,000 pounds, resulted in a revenue of $41.60 per car. The rate under the Cummer scale for 119 miles is 3.2 cents, yielding a revenue under the weight of 64,000 pounds of logs of $20.48 per car. This revenue is but $1.97 per car greater than the purely haulage cost of $18.51 per car. It is 94 cents less than the haulage cost plus taxes, $21.42, and is $7.04 less than the haulage cost plus taxes and interest, $27.52.

The costs in connection with the trainload movement from Hines to Palatka are undoubtedly less than they are in connection with movements in single carload lots. The Cummer scale rates are not trainload rates but apply on single carloads; and all present log movements in Florida other than the Hines to Palatka movement are carload rather than trainload movements. Practically the only service performed in the Hines-Palatka movement is the road haul, except that two switches . day are made at the Palatka plant. No other terminal services, such as are necessary in single carlot movements, are performed.

The Florida interveners presented no affirmative evidence tending to show the cost of transporting logs in Florida but criticized defendant's cost evidence, their principal criticisms being that the defendant's cost figures are based on the average out-of-pocket expense of handling all traffic on the third division and that the methods employed in assigning maintenance and other expenses, taxes, and return or interest on investment to this traffic were erroneous. The unit cost figure of 0.0882888 cent per gross ton-mile

was admitted by defendant to represent merely the average out-of-pocket expense of handling all traffic on the third division. It can not, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida. *Nor. Pacific Ry.* v. *Dept. Public Works*, 268 U. S. 39; *Calif. Growers' & Shippers' Protective League* v. *S. P. Co.*, 129 I. C. C. 25, 52. It appears that nearly 25 per cent of the traffic moving in Florida consists of fruits and vegetables which require special and costly service. The cost of such service enters into the average out-of-pocket cost of the third division and would apparently tend to make it higher than the actual out-of-pocket cost of the log traffic. The conclusion seems to follow that the average cost figure of 0.0882888 cent per gross-ton mile is higher than the actual out-of-pocket cost of the Florida log traffic.

On the other hand it appears that the unit out-of-pocket cost figure developed in connection with the Hines to Palatka movement, 0.0620831 cent per gross-ton mile, is below the average out-of-pocket cost of the Florida log transportation. That movement, it must be remembered, was a regular one in trainload lots of 40 to 45 cars, and the cost of handling such solid trainloads direct between two given points without any intermediate train break-up in classification yards and without any switching en route, is undoubtedly less than on single carload movements which are handled in ordinary pick-up service.

There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things. Using the year 1929 as illustrative, freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using a 5-year average, 1926 to 1930, inclusive, which included the boom period, freight-traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida. Also using the year 1929 as illustrative, freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system in-

cluding Florida. In 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared with 26.17 loaded cars or 43.28 loaded and empty cars per train on the system, including Florida.

In determining the out-of-pocket expenses in Florida, the allocation of revenues and expenses to Florida was made by defendant on the following basis. Intrastate revenues were directly assigned and interstate revenues were apportioned to that State on the basis of a mileage prorate, the operating expenses being allocated on the basis of the operating ratio applied to the revenues. As all interstate traffic handled in Florida originates or terminates in that State, the apportionment of the revenues therefrom on the basis of a straight mileage prorate, without regard to the origin or destination terminal services involved, tends to understate the revenues from that class of traffic. Further, the Florida commission refers to the higher rates on class traffic moving to and from points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line, than on class traffic moving to and from other sections of the South, which were prescribed by this commission in *Southern Class Rate Investigation*, 128 I. C. C. 567, and points out that Florida was not given proper credit on this account in apportioning the interstate revenues on the basis of a mileage prorate. Defendant admits that the interstate revenues apportioned to Florida were understated to some extent on account of these things, but calls attention to the fact that the operating expenses were also understated, because the allocation was based upon the revenues. Defendant also refers to the service performed by the balance of its system in getting coal and supplies to Florida. Coal is charged to the operations in Florida at the average system cost, notwithstanding a substantial haul from the Alabama, Virginia, or West Virginia fields to that State is involved. The portion of the road in Florida, it is claimed, performs no like service for other parts of the system.

From the foregoing it is apparent that the operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida.

Appendix E is a computation to approximate the cost of transporting logs on the basis of system average costs per unit, applied to the average carload, tare weight, empty haul, and average distance that class of traffic is hauled in Florida. In this computation attempt has been made to meet as far as possible the criticisms of the defendant's cost evidence. For instance, deduction from the freight-service operating expenses has been made for wharves and docks, maintenance and operation of floating equipment, and certain traffic expenses, which the defendant concedes are not involved in handling logs. The deductions for these items include their proportion of the expenses for superintendence, as well as their proportion of the general expenses. The total freight-service operating expenses amounted to $36,308,813 in 1929, and these deductions aggregate $1,281,069, leaving $35,027,744 as the remainder. This amount has been apportioned 70.3539 per cent to road or haulage expenses and 29.6461 per cent to yard or nonhaulage expenses, these percentages being based upon the road and yard proportions of certain of the expenses for maintenance of way and structures and for transportation which are segregated in the accounts between these services in accordance with our rules. These are the proportions used by the witness for the Florida commission in his apportionment of the operating expenses between road or haulage and yard or nonhaulage expenses. Applied to the net amount of the freight-service operating expenses above, namely $35,027,744, these percentages result in road or haulage expenses of $24,643,384, and yard or nonhaulage expenses of $10,384,360.

Giving consideration to the criticism that the traffic here involved is carload traffic, and that deduction should be made for the excess terminal expense attributable to handling less-than-carload freight over that attributable to carload traffic, the amount of $2,555,778 has been deducted from the nonhaulage expenses, making the net amount of the nonhaulage expenses $7,828,582 applicable to carload traffic. This deduction of $2,555,778 for platform and excess clerical expenses that are involved for less-than-carload freight, but not for carload freight, is an estimate based upon 75 per cent of the aggregate amount of the expenses for Account 373, "Station employees," and Account 376, "Station supplies and expenses." As a substantial part of the expenses for station employees and station supplies and expenses is obviously attributable to carload freight, the amount that should be deducted on account of less-than-carload freight was therefore estimated at 75 per cent of these expenses.

Dividing the total haulage expenses, $24,643,384, by the total number of gross ton-miles, 11,600,829,000, comprising both revenue

and nonrevenue or company freight, produced an average haulage expense of 0.21243 cent per gross ton-mile, revenue and nonrevenue. The statistics kept by defendant made no segregation of the loaded-car miles and the gross ton-miles between revenue and nonrevenue freight, and the record does not show the number of tons and ton-miles of nonrevenue freight. Due to this fact it is not practicable to segregate the cost of transporting revenue freight on the basis of including therein the cost of transporting nonrevenue or company freight, so that the costs hereinafter developed are understated on this account.

Based on total loaded-car miles (revenue and nonrevenue), 209,835,784, and total revenue ton-miles, 3,281,770,000, there was an average of 15.6397 tons of revenue freight carried per loaded-car mile (revenue and nonrevenue). Using this figure as the divisor, and the total tons of revenue freight carried, 18,951,802, as the dividend, there was approximately a total of 1,211,775 loaded cars of revenue and nonrevenue freight carried. Based on total nonhaulage expenses of $7,828,582, applicable to carload traffic, the average nonhaulage expense was $6.46 per loaded car.

In 1929, United States Government taxes (corporation income) amounted to $570,076, and other than Government taxes (State taxes) to $5,669,924, or a total of $6,240,000 for the road as a whole. Based on these figures and total operating expenses of $53,431,589, freight and passenger, taxes amounted to $0.11678 per dollar of operating expenses.

Property investment in 1929 amounted to $306,439,250, and 5.75 per cent interest thereon to $17,602,257. Based on total operating expenses of $53,431,589, freight and passenger, interest on investment amounted to $0.32977 per dollar of operating expenses.

Based upon the foregoing the following is a summary of the computation of the cost of transporting the average car of logs in Florida the average distance of 81.36 miles:

Operating expenses:	
Haulage expenses; 4,994 gross ton-miles × 0.21243 cent per gross ton-mile	$10.61
Nonhaulage expenses: Average per loaded car	6.46
Total operating expenses	17.07
Taxes: $17.07 (operating expenses) × $0.11678 (taxes per dollar of operating expense)	1.99
Interest on investment at 5.75 per cent:	
$17.07 (operating expense) × $0.32977 (interest per dollar of operating expense)	5.63
Total cost per car	24.69

Cost per 100 pounds	4.35 cents
Average revenue (Cummer scale) per car of logs for average haul, 81.36 miles	$15.12

The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida is that these average costs per unit do not include anything for joint-facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting nonrevenue or company freight.

It is of course well known, as defendant concedes, that it is impossible on a system like the defendant's, engaged in the general transportation of all kinds of freight and of passengers, to determine accurately the exact cost of transporting any one commodity. From the evidence submitted in this case, however, we are convinced that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 56,754 pounds a distance of 81 miles, and transporting the empty car back, is insufficient under all the circumstances and conditions to cover the full cost of the service.

Conclusions and findings.—In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 568, and in *Florida* v. *United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays "a fair proportionate share" of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its "fair proportionate share" of operation and maintenance alone.

In condemning the previous order in this case the Supreme Court did so because the ultimate finding of unjust discrimination was not properly supported by appropriate subordinate findings, that is, there were no findings (1) as to the revenue which had been

derived by the carrier from the traffic in question, (2) as to the revenues which could be reasonably expected under the increased rates, or (3) that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

While the record shows that defendant's Florida log traffic declined considerably after the increase of rates on February 8, 1929, the record further shows that there was no substantial increase in the movement after the Cummer scale was restored on April 10, 1931. The depressed condition of the lumber industry has materially affected this log traffic since the latter part of 1930, and this depressed condition, in our opinion, has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least. The record shows that during the period of approximately two years following the increase in the rates the total movement amounted to 18,602 cars. This total included 3,740 cars transported to Eastport, Lacoochee, and Otter Creek in trainload movements that have ceased and will not be resumed. Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this 2-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South.

The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06) and if the Cummer scale had been applicable they would have been $232,939 ($281,225.75 minus $48,286.75)

or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue.

We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines.

We affirm the finding of division 4 that the interstate rates previously in force on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, from points in northern Florida to destinations in Georgia were unreasonable to the extent that they exceeded those prescribed in the report of division 4, and we find that the rates therein prescribed, which are now in effect, are reasonable.

We further find that the intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia.

In the former report herein division 4 found that the Cummer scale resulted and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida and in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, as well as in unjust discrimination against interstate commerce. The evidence introduced at the original hearing did not show any actual movement of logs from Florida to Georgia. The then existing interstate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing

that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time. Inasmuch as we find that the Cummer scale rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce.

An appropriate order will be entered.

APPENDIX A

Letters from Florida Railroad Commission having reference to establishment of the Cummer scale

TALLAHASSEE, *Oct. 9, 1914*
File #3685

RAILROAD COMMISSION STATE OF FLORIDA

SUBJECT: Logs. Rates to Milldale, Fla.
Mr. Jas. Menzies, FTM,
Atlantic Coast Line RR.
Wilmington, N. C.

Dear Sir:

This office is in receipt of your Freight Tariff No. 3339, effective October 3, 1914, carrying rates on logs, C. L. between stations on the Atlantic Coast Line RR up to a distance of 150 miles, which tariff cancels your No. 3282, which carried rates on logs in trainloads of 28 cars.

I am directed by the Commissioners to call your attention to the paragraph in this paragraph which reads:

"When two or more cars are shipped from one station in one day by one shipper for delivery to one consignee at one destination these rates will be charged for an average carload weight of 50,000 pounds per car; excess of the average weight of 50,000 pounds per car will be charged for pro rata."

The Commissioners wish to say that they will not approve this tariff with the above paragraph incorporated therein, and will expect that you immediately re-publish the tariff with this paragraph eliminated.

When this is done, Freight Tariff No. 3339 will comply with the ideas of the Commissioners, in that the rates are stated per carload, and that they apply between all stations up to the given distance of 150 miles. The Commissioners wish it distinctly understood that this approval extends only to the method of stating the rates in this tariff and not to the rates themselves, and that in their opinion they are too low.

The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds of the Commissioners if they were to order such a scale of rates that your company would contend that they amounted to confiscation and the taking of your property without due process of law.

To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line RR Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business.

You will recall that at the conference in Tallahassee on the 14th of July when the matter of withdrawing your log rates to Milldale, Fla., was under discussion the Commissioners advised you that they thought you should supplant the Milldale rates with your present rates on logs as they are being applied to other points in this State, which advice was based on the conviction that your log rates to Milldale were entirely too low.

The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff #3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions.

Yours very truly,

(S) J. H. TENCH,
Rate Expert.

RAILROAD COMMISSION, STATE OF FLORIDA

TALLAHASSEE, FLA., *August 18, 1915.*

Mr. E. C. McLeod,
Kendrick, Fla.

Dear Sir:

Replying to your letter of August 17th, with reference to the present rate on logs, carload, applicable between stations on the Atlantic Coast Line RR, for a distance of 150 miles and under.

Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may

become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April, 1914, it came to the attention of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holding of the Cummer Lumber Co. largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company.

The Commissioners advised the Atlantic Coast Line RR Co. that they would have to cancel this tariff or make it applicable between all stations on its line in Florida, and that in any event they would have to cancel the application of the rate to logs in trainload lots, as the Commissioners would not recognize anything above the carload as a rate-making unit.

Much to the surprise of the Commissioners, the Atlantic Coast Line corrected the tariff so as to make it applicable between all stations, and open to everyone who had as much as one car of logs to ship. As soon as this was done, we advised the Atlantic Coast Line that we did not approve of these rates, and we also asked counsel for an opinion as to whether we had authority under the law to order the cancellation of a rate on the ground that in our opinion it was too low. We could get no encouragement from counsel that the Commissioners possessed such authority under the law.

As further information I enclose herewith a copy of a communication that was addressed to Mr. Jas. Menzies, Freight Traffic Manager of the Atlantic Coast Line RR, just after their decision to publish these rates as open rates on a mileage basis.

Should the railroad at any time make application to the Commissioners to be allowed to cancel this scale of rates, we would unquestionably allow them to be canceled, but as the matter now stands the move to cancel must be made by the carrier, as the Commission is without authority to order cancellation of a rate because it is too low.

So long as the present conditions prevail it would be to your advantage to locate your mill in Ocala, for the reasons set forth in your letter. The Commissioners regret this condition exists, and I feel sure that after you read the letter to Mr. Menzies, which is attached hereto, you will be convinced that these rates are in effect, not because of any action of the Commissioners, but in spite of their expressed objection.

The present Class P rates in this state, which apply on lumber, logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lumber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida.

Yours very truly,

(Signed) R. HUDSON BURR,
Chairman.

APPENDIX B

Florida intrastate log scales compared with various interstate scales in the South (reduced to cents per 100 pounds)

Distance	Florida interstate scales				Interstate scales in Southeast		Interstate scales in Mississippi Valley		
	Atlantic Coast Line (other than cedar)[1]	A.C.L. and S.A.L. (not over 6 feet in length)	Seaboard Air Line (other than cedar and over 6 feet long)	Georgia Southern & Florida (other than cedar)	On A.C.L., S.A.L., Southern and as net transit rates on L. & N.[2]	Single-line scale prescribed in 178 I.C.C. 671 to destinations in Tennessee[3]	Net transit scale on I.C. and M. & O. (except cedar, cherry, and certain foreign woods)[4]	Local scale on Illinois Central (except cedar, walnut, and cherry)	Local scale on Mobile & Ohio (except cedar, walnut, cherry, and mahogany)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5 miles and under	1.71	2.14	2.81	1.95	2.5	3.5	2	3.5	4.5
10 miles and over 5	1.71	2.14	2.81	2.40	2.5	3.5	2	3.5	4.5
15 miles and over 10	1.71	2.37	2.81	3.16	3	4	2	4.5	6
20 miles and over 15	1.71	2.37	2.81	3.16	3	4	2.5	5	6
25 miles and over 20	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
30 miles and over 25	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
35 miles and over 30	1.71	2.88	3.94	3.83	4	5	3.5	6.5	7
40 miles and over 35	1.71	2.88	3.94	3.83	4	5	3.5	7	8.5
45 miles and over 40	2.10	3.25	3.94	4.33	4.5	5.5	4	8	8.5
50 miles and over 45	2.10	3.25	3.94	4.33	4.5	5.5	4.5	8.5	8.5
55 miles and over 50	2.10	3.50	4.50	4.60	4.5	6	4.5	8.5	8.5
60 miles and over 55	2.10	3.50	4.50	4.60	5	6	5	8.5	8.5
65 miles and over 60	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
70 miles and over 65	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
75 miles and over 70	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
80 miles and over 75	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
85 miles and over 80	2.30	4.25	5.63	5.66	5.5	7	6	10.5	8.5
90 miles and over 85	2.30	4.25	5.63	5.66	6	7.5	6.5	10.5	10.5
95 miles and over 90	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
100 miles and over 95	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
105 miles and over 100	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
110 miles and over 105	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
115 miles and over 110	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
120 miles and over 115	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
125 miles and over 120	3.20	5.13	6.75	.....	7	8.5	7	11.5	10.5
130 miles and over 125	3.20	5.13	6.75	.....	7	8.5	7	11.5	10.5
135 miles and over 130	3.40	5.13	6.75	.....	7	8.5	7	11.5	10.5
140 miles and over 135	3.40	5.13	6.75	.....	7	8.5	7	11.5	10.5
145 miles and over 140	3.40	5.50	7.31	.....	7.5	9	7	11.5	11.5
150 miles and over 145	3.40	5.50	7.31	.....	7.5	9	7	11.5	11.5
155 miles and over 150	3.40	5.75	.....	.....	7.5	9	7	11.5	11.5
160 miles and over 155	3.40	5.75	.....	.....	7.5	9	7	11.5	11.5
165 miles and over 160	3.70	6.25	.....	.....	8	9.5	8	12.5	11.5
170 miles and over 165	3.70	6.25	.....	.....	8	9.5	8	12.5	11.5
180 miles and over 170	8.33	6.25	.....	.....	8	9.5	.....	.....	.....
200 miles and over 180	8.33	6.25	.....	.....	8.5	10	.....	.....	.....
220 miles and over 200	8.67	6.50	.....	.....	9	10.5	.....	.....	.....
240 miles and over 220	9.00	6.75	.....	.....	9.5	11	.....	.....	.....
260 miles and over 240	9.17	6.87	.....	.....	10	11.5	.....	.....	.....
280 miles and over 260	9.50	7.12	.....	.....	10.5	12	.....	.....	.....
290 miles and over 280	9.67	7.25	.....	.....	11	12.5	.....	.....	.....
300 miles and over 290	9.83	7.37	.....	.....	11	12.5	.....	.....	.....

[1] Cummer scale to and including 170 miles; Class P minimum 30,000 pounds for distances over 170 miles.
[2] On A. C. L. scale does not apply on cedar, cherry, mahogany, or walnut logs. Scale runs to 550 miles.
[3] Scale runs to 800 miles.
[4] On I. C. does not apply on pine or walnut.

APPENDIX C

Comparison of Cummer scale with intrastate rates on logs between points on Atlantic Coast Line Railroad in Virginia, North Carolina, South Carolina, Georgia, and Alabama (reduced to cents per 100 pounds)

	Cummer scale (except cedar).	Virginia (except cedar, cherry, mahogany and walnut)	North Carolina	South Carolina	Georgia (transit)	Georgia (local)	Alabama
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5 miles	1.71	2.5	1.8	2	1.83	3.05	2.5
7 miles	1.71	2.5	1.8	2	1.83	3.05	2.5
10 miles	1.71	2.5	1.8	2	2.11	3.51	2.5
12 miles	1.71	3	1.8	2.5	2.11	3.51	3
15 miles	1.71	3	2.13	2.5	2.11	4.17	3
17 miles	1.71	3	2.13	2.5	2.5	4.17	3
20 miles	1.71	3	2.13	2.5	2.63	4.38	3
22 miles	1.71	3.5	2.13	3	2.63	4.38	3.5
25 miles	1.71	3.5	2.62	3	2.88	4.79	3.5
27 miles	1.71	3.5	2.62	3	2.88	4.79	3.5
30 miles	1.71	3.5	2.62	3	3	5	3.5
32 miles	1.71	4	2.62	3	3	5	4
35 miles	1.71	4	2.88	3	3.25	5.41	4
37 miles	1.71	4	2.88	3	3.25	5.41	4
40 miles	1.71	4	2.88	3	3.38	5.61	4
42 miles	2.1	4.5	2.88	3.5	3.38	5.61	4.5
45 miles	2.1	4.5	2.88	3.5	3.5	5.91	4.5
47 miles	2.1	4.5	3.25	3.5	3.5	5.91	4.5
50 miles	2.1	4.5	3.25	3.5	3.5	5.91	4.5
52 miles	2.1	4.5	3.25	3.5	3.5	5.91	4.5
55 miles	2.1	4.5	3.5	3.5	3.63	6.04	4.5
57 miles	2.1	5	3.5	4	3.63	6.04	5
60 miles	2.1	5	3.5	4	4	6.66	5
62 miles	2.3	5	3.5	4	4	6.66	5
65 miles	2.3	5	4	4	4.13	6.87	5
67 miles	2.3	5	4	4	4.13	6.87	5
70 miles	2.3	5	4	4	4.25	7.08	5
72 miles	2.3	5.5	4	5	4.25	7.08	5.5
75 miles	2.3		4.25	5	4.38	7.29	5.5
77 miles	2.3		4.25	5	4.38	7.29	5.5
80 miles	2.3		4.25	5	4.63	7.71	5.5
82 miles	2.3		4.25	5	4.63	7.71	5.5
85 miles	2.3		4.62	5	4.75	7.91	5.5
87 miles	2.3		4.62	5	4.75	7.91	6
90 miles	2.3		4.62	5	4.88	8.12	6
92 miles	2.6		4.62	5	4.88	8.12	6
95 miles	2.6		5	5	5.32	8.54	6
97 miles	2.6		5	5	5.13	8.54	6
100 miles	2.6		5	5	5.38	8.96	6
110 miles	2.8		5.38	6.5	5.5	9.17	6.5
120 miles	3.2		5.63	6.5	5.63	9.34	6.5
130 miles	3.2		6.13	7	5.75	9.58	7
140 miles	3.4		6.25	7	6	10	7
150 miles	3.4		6.75	8	6.25	10.41	7.5
160 miles	3.4		7.13	8	6.38	10.62	7.5
170 miles	3.7		7.38	8	6.5	10.83	8

APPENDIX D

Comparison of rates per 100 pounds and car-revenue under rates assailed on logs with important commodities moving between north Florida and Georgia points on the Atlantic Coast Line

[Loadings shown are the average for the system in 1925. Average haul for system in May, 1926, logs 109 miles, brick 213 miles, sand and gravel 120 miles, lime 217 miles, cement 243 miles]

	Rates on logs		Georgia-Florida interstate rates			
	Interstate	Florida intrastate	Common brick	Gravel and sand	Lime	Cement
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5 miles	2.5	1.71	3	2.5	2.8	4
10 miles	2.5	1.71	3	2.5	3.6	5
15 miles	3	1.71	3.5	2.75	4	6
20 miles	3	1.71	3.5	2.75	4.4	7
25 miles	3.5	1.71	4	3	4.8	8
30 miles	3.5	1.71	4	3	5.2	8
35 miles	4	1.71	4.5	3.5	5.6	8.5
40 miles	4	1.71	4.5	3.5	6	8.5
45 miles	4.5	2.10	5	4	6.4	9
50 miles	4.5	2.10	5	4	6.8	9
55 miles	4.5	2.10	5	4	7.2	9.5
60 miles	5	2.10	5	4	7.6	9.5
65 miles	5	2.30	5.5	4.5	8	10
70 miles	5	2.30	5.5	4.5	8.4	10
75 miles	5.5	2.30	6	4.5	8.8	10.5
80 miles	5.5	2.30	6	4.5	8.8	10.5
85 miles	5.5	2.30	6.5	5	9.2	11
90 miles	6	2.30	6.5	5	9.2	11
95 miles	6	2.60	6.5	5	9.6	11.5
100 miles	6	2.60	6.5	5	9.6	11.5
110 miles	6.5	2.80	7	5.5	10	12
120 miles	6.5	3.20	7	5.5	10	12
130 miles	7	3.20	7	6	10.4	12.5
140 miles	7	3.40	7	6	10.4	12.5
150 miles	7.5	3.40	7.5	6	10.8	13
160 miles	7.5	3.40	7.5	6.5	10.8	13
170 miles	8	3.70	8	6.5	11.2	13.5

	Revenue per car, logs		Revenue per car, Georgia-Florida interstate			
	Interstate, 55,000 pounds	Florida intrastate, 55,000 pounds	Brick, 66,580 pounds	Gravel and sand, 92,540 pounds	Lime, 50,000 pounds	Cement, 70,740 pounds
5 miles	$13.75	$9.41	$19.97	$23.14	$14.00	$28.30
10 miles	13.75	9.41	19.97	23.14	18.00	35.37
15 miles	16.50	9.41	23.30	25.45	20.00	42.44
20 miles	16.50	9.41	23.30	25.45	22.00	49.52
25 miles	19.25	9.41	26.63	27.76	24.00	56.59
30 miles	19.25	9.41	26.63	27.76	26.00	56.59
35 miles	22.00	9.41	29.96	32.39	28.00	60.13
40 miles	22.00	9.41	29.96	32.39	30.00	60.13
45 miles	24.75	11.55	33.29	37.02	32.00	63.67
50 miles	24.75	11.55	33.29	37.02	34.00	63.67
55 miles	24.75	11.55	33.29	37.02	36.00	67.20
60 miles	27.50	11.55	33.29	37.02	38.00	67.20
65 miles	27.50	12.65	36.62	41.64	40.00	70.74
70 miles	27.50	12.65	36.62	41.64	42.00	70.74
75 miles	30.25	12.65	39.95	41.64	44.00	74.28
80 miles	30.25	12.65	39.95	41.64	44.00	74.28
85 miles	30.25	12.65	43.28	46.27	46.00	77.81
90 miles	33.00	12.65	43.28	46.27	46.00	77.81
95 miles	33.00	14.30	43.28	46.27	48.00	81.35
100 miles	33.00	14.30	43.28	46.27	48.00	81.35
110 miles	35.75	15.40	46.61	50.90	50.00	84.89
120 miles	35.75	17.60	46.61	50.90	50.00	84.89
130 miles	38.50	17.60	46.61	55.52	52.00	88.43
140 miles	38.50	18.70	46.61	55.52	52.00	88.43
150 miles	41.25	18.70	49.94	55.52	54.00	91.96
160 miles	41.25	18.70	49.94	60.15	54.00	91.96
170 miles	44.00	20.35	53.26	60.15	56.00	95.50

APPENDIX E

Estimated cost of transporting logs in Florida for average distance of 81.36 miles, based on A. C. L. average costs per unit for calendar year 1929 applied to the average units involved in hauling logs in that State

BASIC DATA

Operating expenses:		
Total freight-service operating expenses		$36,308,813
Expenses not involved in handling log traffic:		
Maintenance of way and structures:		
No. 241. Wharves and docks	$135,980	
No. 201. Superintendence (proportion), 5.334 per cent × $135,980	7,253	
Maintenance of equipment:		
Nos. 323 and 324. Floating equipment—Repairs and depreciation	33,481	
No. 301. Superintendence (proportion), 3.845 per cent × $33,481	1,287	
Traffic:		
No. 352. Outside agencies	488,740	
No. 353. Advertising	4,579	
No. 354. Traffic associations	46,802	
No. 356. Industrial and immigration bureaus	16,637	
	556,758	
No. 351. Superintendence (proportion), 81.94 per cent × $556,758	456,246	
Transportation—Rail line:		
No. 408. Operating floating equipment	33,543	
No. 371. Superintendence (proportion), 4.392 per cent × $33,543	1,473	
Total	1,226,021	
General expenses:		
Proportion applicable to above items—4.490 per cent × $1,226,021	55,048	
Total expenses not involved		1,281,069
Net freight-service operating expenses		35,027,744

Apportionment between haulage and nonhaulage expenses	Haulage expenses	Nonhaulage expenses
Net freight-service operating expenses, apportioned 70.3539 per cent to haulage and 29.6461 per cent to nonhaulage, based on proportions obtained from those of "Maintenance of way and structures" and "Transportation—Rail line" accounts, which are segregated between cost of haulage and yard or nonhaulage expenses (see testimony, Witness Pettijohn, R. 1465)	$24,643,384	$10,384,360
Deduction for excess terminal expense (platform and clerical) incurred for less-than-carload over that incurred for carload freight, estimated at 75 per cent of accounts 373, "Station employees," and 376, "Station supplies and expenses" ($3,407,701 × 75 per cent)		2,555,778
Net amounts applicable to carload traffic	24,643,384	7,828,582

Gross ton-miles	11,600,829,000
Average haulage expense per gross ton-mile	$0.0021243
Revenue ton-miles	3,281,770,000
Loaded-car miles (revenue and nonrevenue)	209,835,784
Revenue tons per loaded-car mile (revenue and nonrevenue)	15.6397
Total revenue tons carried	18,951,802
Total loaded cars carried (revenue and nonrevenue)	1,211,775
Average nonhaulage expense per loaded car	$6.46
Taxes:	
U. S. Government (corporation income)	$570,076
Other than U. S. Government (State taxes)	$5,669,924
Total taxes	6,240,000
Total operating expenses (freight and passenger)	53,431,589
Taxes per dollar of operating expense	$0.11678
Interest on investment at 5.75 per cent:	
Property investment as of December 31, 1929	$306,439,250
5.75 per cent interest on investment	$17,620,257
Interest on investment per dollar of operating expense	$0.32977
Statistical data for log traffic in Florida:	
Average revenue per car under so-called Cummer scale	$15.12
Average distance hauled (miles)	81.36
Average billing weight (pounds)	56,754.
Average tare weight of car (pounds)	33,000.
Average tare weight of car, empty haul (pounds)	33,000.
Gross weight (pounds)	122,754.
Gross weight (tons)	61.377
Gross ton-miles per car (61.377 gross tons x 81.36 miles)	4,994.

COMPUTATION OF COSTS

Estimated cost per car of hauling logs in Florida based on A. C. L. average costs per unit:

Operating expenses:		
Haulage expenses: 4,994 gross ton-miles x $0.0021243 per gross ton-mile	$10.61	
Nonhaulage expenses: Average per loaded car	6.46	
Total operating expenses		$17.07
Taxes: $17.07 (operating expenses) x $0.11678 (taxes per dollar of operating expenses)		1.99
Interest on investment at 5.75 per cent: $17.07 (operating expenses) x $0.32977 (interest per dollar of operating expenses)		5.63
Total cost per car		24.69
Cost per 100 pounds		4.35 cents
Average revenue (Cummer scale) per car of logs for average haul of 81.36 miles		15.1

APPENDIX F

Minimum rates per 100 pounds prescribed herein on Florida intrastate log traffic

Distance	Rate [1]	Distance	Rate [1]
	Cents		*Cents*
10 miles and under	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

[1] Minimum 40,000 pounds.

186 I. C. C.

18345

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANTIC COAST LINE RAILROAD COMPANY

154781—33

U. S. GOVERNMENT PRINTING OFFICE: 1933

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANT COAST LINE RAILROAD COMPANY

Submitted November 22, 1932. Decided January 9, 1933

Findings in prior report on further hearing, 186 I. C. C. 157, that the rates logs over 6 feet in length, except walnut, cherry, and cedar, in carlo applying on shipments between points on the Atlantic Coast Line Railr in Florida for distances of 170 miles and less were unjustly discriminat against interstate commerce, affirmed.

R. C. Alston and *F. W. Gwathmey* for defendant.

T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. T. Ashby, J. V. Norman, A. G. Gutheim, F. Hillyer, and *E. C. Green* for interveners.

SECOND REPORT OF THE COMMISSION ON FURTHER HEARING

MEYER, *Commissioner:*

Our report on further hearing of July 5, 1932, 186 I. C. C. 1 contains a full and complete history of this proceeding up to t time. To briefly summarize what is there shown: In the origi report, 146 I. C. C. 717, defendant's interstate rates on logs ove feet in length, except walnut, cherry, and cedar, for distances of 1 miles and less, from northern Florida to Georgia were found unr sonable, and its Florida intrastate rates on similar logs for simi hauls, known as the Cummer scale, found to result in undue pref ence to shippers of intrastate traffic within Florida and undue pre dice to shippers of interstate traffic from points in Florida to poi in Georgia and in unjust discrimination against interstate commer Suits were brought by the State of Florida, the Florida Railro Commission, and certain manufacturers of lumber in Florida, int veners herein, to enjoin that part of the order entered that dealt wi the Florida intrastate rates, and in *Florida v. United States*, 2 U. S. 194, the Supreme Court held that such part of the order w not supported by appropriate findings. Thereafter, upon petitio of complainant and defendant, we reopened the proceeding for fu ther hearing, which was held. In our report on such further hea ing, referred to above, we affirmed the previous findings, exce that as to the alleged undue prejudice against persons and localiti

in interstate commerce we made no finding. We again, by order of July 5, 1932, as amended by order of July 28, 1932, required that the unjust discrimination against interstate commerce be removed by establishing intrastate in Florida the same scale which we found reasonable for interstate application from Florida to Georgia. Bills to enjoin this order were filed in the United States district court by the same parties who had succeeded in enjoining the previous order. Argument was had before the court September 14, 1932, the day before the effective date of our order. The court took the case under advisement and, in order to allow time for it to consider the case, issued a temporary suspension order for not to exceed 60 days. In early October the same parties filed with us petitions for further hearing, setting forth therein that since our report on further hearing other southern rail carriers had reduced their log rates to substantially the same basis as the Cummer scale. On or about the same time they filed supplemental bills in the United States district court in which they set up the filing of these petitions and prayed that our order be further stayed. Upon consideration of the petitions referred to, we suspended the operation of our order of July 5, 1932, as amended, until our further order and reopened the proceeding for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant. The bills and supplemental bills filed in the United States district court are still pending. The further hearing has been held; also oral argument before the presiding examiner, as provided by our order of reopening.

The evidence introduced at the further hearing shows that certain carriers that operate in southwestern and southern territories have in recent months established rates on logs, bolts, billets, rough staves, and heading in amounts per car regardless of weight, which rates are on substantially the same level as the Cummer scale referred to. These rates were first established by certain railroads operating west of the Mississippi River, following a meeting held March 29, 1932, between their representatives and certain shippers, at which meeting it was agreed that rates of $12.50 for distances of 25 miles or less, $15 for distances of 25 but not over 50 miles, $17.50 for distances of 50 but not over 75 miles, and $22.50 for distances of 75 but not over 100 miles should be established in Arkansas, Louisiana, and Missouri experimentally in an effort to meet truck competition, and that they should expire by limitation December 31, 1932.

On or about the same time the Illinois Central system, and later the Gulf, Mobile & Northern Railroad, Mobile & Ohio Railroad, St. Louis-San Francisco Railway, Central of Georgia Railway, Southern system, Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway, Western Railway of Alabama, and Columbus & Greenville Railway established similar rates. Those of the Illinois Central system became effective April 1, 1932, intrastate in Mississippi, and April 12, 1932, interstate; those of the Gulf, Mobile & Northern, May 9, 1932; and those of the other lines at subsequent dates, generally in July and August, 1932. Generally these rates are published to expire in one year unless sooner canceled, changed, or extended.

The rates of these southern lines are not uniform and also vary somewhat from those referred to above as agreed upon by the southwestern carriers. Like those of the southwestern carriers, all are in amounts per car regardless of weight. Generally they are either $12 or $12.50 for distances to 25 miles and either $20 or $22.50 for distances over 75 but not over 100 miles, with rates for the intermediate mileage blocks the same as those of the southwestern carriers. However, the rates of the Seaboard Air Line and Central of Georgia to Montgomery, Ala., and those of the Western of Alabama to Montgomery and Selma, Ala., which are the only per car rates published by those lines, as well as those of the Southern to Selma, Mobile, and York, Ala., are $14.50, $17.50, $20, and $22.50 for the respective mileage blocks mentioned above. The Columbus & Greenville has also established rates of $22.50 for distances over 100 but not over 125 miles; $25 for distances over 125 but not over 150 miles; and $27.50 for distances over 150 but not over 170 miles.

The per car rates of the Illinois Central system apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products, as will be later explained. It will

be noted that all of these rates apply in the western portion of southern territory and none in the eastern portion.

Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also to points to which they are applicable if the tariff provisions referred to above are not complied with. The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York, and Chattanooga are local rates and their application is not dependent upon the outbound movement of the manufactured products over their lines.

The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. While the extent of this truck competition is not shown, it apparently was sufficiently compelling, in the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment. With some of these southern carriers, particularly the Mobile & Ohio and the St. Louis-San Francisco, carrier competition also had a considerable influence in the establishment of these rates. For example, a representative of the St. Louis-San Francisco testified that that road had decided not to establish these rates east of the Mississippi River, but was later forced to do so to meet the competition of other carriers, it having found that logs were being trucked from its rails to competing railroads which had previously established the per car rates. In this connection it should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement on the manufactured products,

except in the case of the Nashville, Chattanooga & St. Louis and, in some instances, the Southern.

It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product; and that while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product. A representative of the Southern testified that in those instances in which its per car rates were not made dependent on the outbound movement of the manufactured product it was willing to depend upon what it termed the moral obligation of the shipper to give it the outbound movement. With respect to its per car rates to Memphis, Laurel, and Corinth the Southern provides by its tariffs that such rates shall apply only if it transports the outbound manufactured product. No representative of the Nashville, Chattanooga & St. Louis appeared at the further hearing.

Representatives of the Illinois Central, Gulf, Mobile & Northern, Mobile & Ohio, St. Louis-San Francisco, Central of Georgia, and Southern testified that they hoped that the experiment of publishing these rates would prove successful after sufficient time had elapsed to fully test it, but that so far the experiment had not proved successful, as they had regained relatively little of the log traffic from the trucks; that what traffic they had regained from the trucks had been for the most part traffic moving from about 25 to 60 miles, although some had been recovered that moved as much as 98 miles and some that moved as little as 11 miles; and that there is little, if any, hope of securing much of the traffic that now moves by truck for distances under 25 miles, a considerable portion of which never has moved by rail.

A witness for the Florida interveners testified that two mills, which he had visited and whose records he had inspected, had materially increased their shipments by rail since the establishment of these per car rates; that one, at Montgomery, previously received about 10 per cent of its logs, amounting to about 10 or 12 carloads a month, by rail, whereas since the establishment of these rates it had received over the Central of Georgia from 60 to 90 carloads a month, which constituted about 50 per cent of the logs received; and that the other, at Chattanooga, with a capacity of 25,000 feet a day and operating from two to three days a week for the past year, previously received about 20 per cent of its logs by rail and 80 per cent by truck, whereas since the establishment of these rates it has re-

ceived about 80 per cent by rail and 20 per cent by truck. His testimony with respect to the receipts of the mill at Montgomery is not borne out by the testimony of the representative of the Central of Georgia, which shows that that carrier's per car rates to Montgomery became effective August 15, 1932, intrastate, and September 13, 1932, interstate, and that thereafter to November 11, 1932, which was 10 days prior to the further hearing, it had transported but 53 carloads of logs to Montgomery. On the basis of two days' operation per week, the total log requirements of the Chattanooga mill would be about five carloads of 100,000 pounds each per week. Accordingly, the increase in the rail movement of logs to that mill from approximately 20 to 80 per cent of the total represents an increase of but three carloads a week. On the basis of three days' operation, the increase would be about four or five carloads a week.

The parties are in agreement that the tendency of rates per car regardless of weight is to increase the loading of the cars. The Florida interveners show that since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds.

Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less. A witness employed by the Florida intervener to make an investigation of the extent of the movement of logs by truck in Florida specified 23 mills located at 19 different points in Florida to which all or substantially all of the logs cut were transported by truck. Most of these mills were cutting less than 10,000 feet of lumber a day, only four were cutting more. The 23 mills were cutting a total of less than 200,000 feet a day, which is less than the capacity of a single large Florida mill such as that of intervener Brooks-Scanlon Corporation at Foley, and is a very small percentage of the total lumber cut in Florida. This witness testified as to the range of the hauls by truck to nearly all of these mills, but did not know what the average hauls were, the location of the logs, or how far they were from a railroad. The maximum hauls were 10 miles or less to three of the mills, between 10 and 15 miles to two, between 15 and 20 to five, between 20 and 25 miles to four, between 25 and 30 miles to two, and between 30 and 45 miles to five. The length of the hauls to two of the mills were not known. Of the 23 mills, 7 were located on defendant's lines exclusively, 3 on the lines of defendant and the Seaboard Air Line,

1 on the lines of defendant and the Southern, 9 on the Seaboard Air Line exclusively, 1 on the Florida East Coast, 1 on the Georgia Southern & Florida, and 1 on the Live Oak, Perry & Gulf. The 11 mills located on defendant's lines were cutting a total of approximately 87,500 feet a day; and the maximum haul by truck was 10 miles to two of the mills, between 10 and 15 miles to two, between 15 and 20 miles to two, between 20 and 25 miles to three, and between 25 and 30 miles to one. The length of the hauls to two were not known. The record does not show whether any of the logs moved by truck to these 11 mills could have moved over defendant's lines. A cut of 87,500 feet a day represents approximately 20 carloads of logs, based on 4,231 board feet to the carload, the average of one intervener, as will hereinafter appear.

In addition to the above, representatives of two other mills located at Jacksonville testified as to the movement of logs to their mills by truck. One is located on defendant's lines exclusively and the other on the Seaboard Air Line exclusively. The former started operations in June, 1930, and cuts approximately 700,000 feet a month; the latter started operations in March, 1931, and has cut from 75,000 to 100,000 feet a week from that time to early in November last, when it ceased operations until the first of the year when it expected to resume.

The first of these mills is that of F. S. Buffum Company, which company was permitted to intervene herein at the time the case was reopened for further hearing. From June, 1930, to October, 1932, both months inclusive, it received 1,092 carloads of logs by rail, 931 of which were transported to Jacksonville by defendant, 135 by the Seaboard Air Line, 2 by the Southern, and 24 by the Florida East Coast. During the same period this intervener received the equivalent of 1,935.3 carloads by truck and 154.3 carloads by water, using 4,231 board feet of logs as a carload, that being the average board measure per carload received by rail at this mill. The movement during the period when the interstate rates prescribed in the original report of division 4 were in effect is compared with the movement during the subsequent period when the Cummer scale was charged. While the Cummer scale was reestablished April 10, 1931, shipments received during April and May, 1931, were included in the period during which the interstate scale was in effect, the witness for intervener stating that it had taken some time to rearrange the mill's contracts for logs. During the 12 months from June, 1930, to May, 1931, this intervener received 275 carloads by rail and the equivalent of 703.8 carloads by truck and 85 by water, a total of 1,063.8 carloads. Approximately 26 per cent of the carloads were received by rail during this period. During the subsequent seven

months, June to December, 1931, during which the Cummer scale was in effect, a total of 529 carloads were received, of which approximately 26 per cent were by rail. During the latter period the mill was not operating for two and a half months. During the first 10 months of 1932, when the Cummer scale was also in effect, 683 carloads were received by rail and the equivalent of 848.5 by truck and 64.2 by water, a total of 1,595.7 carloads. During this period approximately 43 per cent of the carloads moved by rail. The hauls of the shipments received by truck during these 10 months of 1932 ranged from 16 to 55 miles and the weighted-average haul was 30.6 miles. If these logs had moved by rail, the rail hauls would have ranged from 12 to about 40 miles. The differences between the rail and the truck distances range from 2 to 20 miles and apparently the greater part of these differences represent the hauls necessary to get the logs to the railroad. For example, the truck hauls from Maxville and Doctor's Inlet are given as 30 and 38 miles, respectively, and the rail hauls from the same points as 28 and 18 miles, respectively. Of the shipments by truck during these 10 months only the equivalent of 254 carloads, or approximately 30 per cent of the total received by truck, were from points from which they could have moved over defendant's lines if moved by rail; over 50 per cent were from points adjacent to the Florida East Coast. These 254 carloads moved by truck notwithstanding the fact that the Cummer scale was in effect over defendant's lines. All but 3 of these 254 carloads moved from points from which the rail distances to Jacksonville range from 11 to 26 miles.

The other Jacksonville mill referred to is that of the W. J. Bryson Lumber Company. Its representative testified that since it started operations in March, 1931, it has received all of its logs by truck, except that 27 or 28 carloads were received by rail from Dukes and Cross City on defendant's lines. The rail hauls to Jacksonville from those points are 58 and 118 miles, respectively. While the witness further testified that the truck hauls ranged from 10 to 68 miles and that a substantial portion of the logs were hauled over 50 miles, instancing the haul from Green Cove Springs as between 60 and 70 miles, the evidence introduced by the Jacksonville intervener, referred to above, shows that its truck hauls from that point were but 40 miles and the rail distance 26 miles. This witness also testified that the average haul by truck to his mill was about 50 miles, but the evidence of record as a whole indicates that none of the specific movements referred to by him was over about 40 miles.

The total cut of all the mills to which the Florida interveners show a movement of logs by truck is less than 250,000 feet a day, which is equivalent to a daily movement of about 57 carloads of logs.

However, many of these mills are not on the rails of defendant and much of the movement by truck to these mills is from territory not served by defendant. As stated, approximately 254 carloads moved to the Buffum Company by truck during the first 10 months of 1932 that could have moved over defendant's lines, and the record also indicates that approximately 200 carloads received by the Bryson Company since March, 1931, could have moved over defendant's lines, but the record does not show that any of the other logs shown to have moved by truck in Florida could have moved over defendant's lines. The logs that moved by truck to these two companies which the record shows could have moved over defendant's lines represent an average of approximately 35 carloads a month and, as indicated above, they moved for relatively short distances. During the first eight months of 1932, defendant transported 773 carloads of logs to Jacksonville, an average of 96.5 carloads per month. The rail hauls on these logs ranged from 32 to 185 miles; the hauls on all except eight carloads were 53 miles or more.

A witness for intervener Wilson Lumber Company of Florida, which operates at Perry one of the larger hardwood mills in Florida, testified that that company has received very few logs by truck, but that the road conditions in the vicinity of the mill are favorable for movement by truck; that his company owns or has under option about 14,000,000 feet of timber located from about 0.25 to 15 miles from defendant's line at Carbur, which is 17 miles from Perry over defendant's lines, and about 1,000,000 feet at other points within about 30 miles of its mill; that it also buys hardwood logs from other companies which cut pine and cypress, which logs have moved by rail for distances up to about 170 miles; that it has received an offer from a responsible party to transport these logs from Carbur to Perry for $2 per thousand feet, minimum 25,000 feet a day; that the Cummer scale rate of 171 cents per 100 pounds for the distance from Carbur to Perry is equivalent to $2.05 per thousand feet, and the interstate scale of 3 cents for that distance equivalent to $3.60 per thousand feet, which latter rate it would be out of the question for his company to pay as against the truck rate of $2 per thousand feet.

The freight-traffic manager of defendant testified that one of his important duties is to keep informed as to the extent to which trucks are taking business from defendant and as to the advisability and practicability of defendant reducing its rates because of truck competition, and that from 75 to 80 per cent of his time is given to a study of truck competition; that there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including

Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks; and that the log traffic which moves by truck for distances under 25 miles could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad stations represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars. This witness also showed that defendant's total log traffic in Florida, exclusive of that moving in trainloads, for the 13 months following the last hearing, that is from August 1, 1931, to August 31, 1932, was 2,453 carloads as compared with 3,245 carloads during the previous 13 months from July 1, 1930, to July 31, 1931. The decrease was 792 carloads, or 24.4 per cent, but the decrease in defendant's Florida lumber traffic during the same period was even greater. From July 1, 1930, to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles, and lath originating in Florida, whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all Class I carriers in the southern region, and over all Class I carriers in the United States. For example, from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following nine months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all Class I carriers in the southern region and by all Class I carriers in the United States were 27, 28, and 30, respectively.

Exclusive of the movement in trainloads, defendant handled a monthly average of 282 carloads of logs over 6 feet in length between points in Florida during the year 1930, an average of 198 carloads a month during 1931, and an average of 188 carloads a month during the first eight months of 1932. In this connection it should be remembered that in 1930, when the movement was heaviest, and to April 10, 1931, the interstate scale of rates prescribed in the original report was in effect, and that during the remainder of 1931 and 1932 the much lower Cummer scale was charged. The monthly movement, exclusive of that in trainloads, since the former hearing, July 21, 1931, has averaged substantially the same as from December 1, 1930, to August 1, 1931. As stated in our prior report on further hearing the main depression in the lumber industry in Florida began about the latter part of 1930. At the time of the last previous hearing, the only remaining train-

load movement was from Hines to Palatka. The extent of that movement and the extent to which the mill at Palatka has been operating since that time has not been shown, nor has it been shown that the mill at Palatka has received any logs by truck. As stated in our prior report on further hearing, the movement from February 1 to June 30, 1931, was from 52 different stations to 17 different destinations. The movement from February 1, 1931, to August 31, 1932, exclusive of the trainload movement from Hines to Palatka, was 4,079 carloads, which shipments were from 125 different stations to 28 destinations for hauls ranging from 5 to 235 miles. Of these shipments, 79 moved for distances over 170 miles, beyond which distance the Cummer scale does not extend, and, as indicated by Appendix B to our prior report on further hearing, the Florida intrastate rates applicable over defendant's lines for distances over 170 miles are on substantially the same level as the interstate rates generally applicable in southern territory and as the rates prescribed for intrastate application in Florida for distances of 170 miles and less in the original report in this proceeding.

The record warrants the conclusion that truck competition and, to a lesser degree, carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

The Florida interveners contend that as transportation conditions are substantially similar throughout southern territory and as the Cummer scale is substantially the same as or slightly higher than the per car rates of these other southern lines, the Cummer scale can not cast an undue revenue burden on interstate commerce, as found in our prior report on further hearing, unless the per car

rates referred to also cast a similar revenue burden on interstate commerce.

Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. We referred to *Southern Class Rate case* in which we prescribed class rates for that part of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida than were prescribed in the *Class Rate case*. In *Rates on Chert, Clay, Sand, and Gravel*, 140 I. C. C. 85, and *Petroleum and Its Products*, 171 I. C. C. 286, the rates prescribed for the hauls in Florida were approximately 40 per cent higher than for the remainder of southern territory.

Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances.

In Florida, on the other hand, the movement of logs has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck-competitive rates for distances under 25 miles would regain little, if any, traffic, and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted. Logs in single carloads are now

moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida. The monthly movement since February 10, 1931, when the Cummer scale was reestablished, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the reestablished substantially lower Cummer scale has had no effect on the volume of rail movement.

Generally we do not approve of rates published in amounts per car regardless of weight and nothing contained herein should be considered as an approval of rates so published on logs. These per car rates on logs are not here in issue and no one has complained to us in any other proceeding that they are unreasonable, unduly preferential, or otherwise unlawful.

We affirm all of the findings in our prior report on further hearing and will vacate our order suspending the operation of our order of July 5, 1932, as amended.

Our findings herein and in our prior report on further hearing are without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.